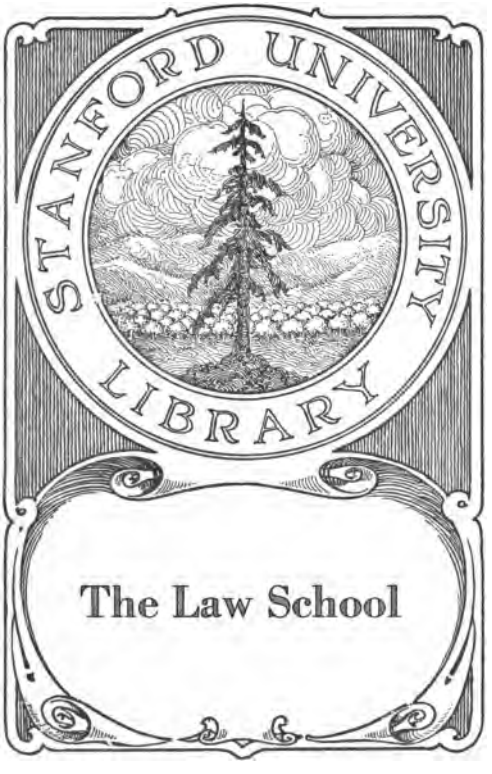

Sincerely
Robt. B. Gray

MINUTES OF THE NINTH ANNUAL MEETING OF THE

Mississippi State Bar Association

AND PROCEEDINGS OF THE JOINT SESSIONS OF THE MISSISSIPPI STATE BAR ASSOCIATION AND LOUISIANA STATE BAR ASSOCIATION

HELD AT GULFPORT, MISSISSIPPI
APRIL 30—MAY 1

1914

PRINTED BY HEDERMAN BROS., JACKSON, MISS.

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PRINTED BY HEDERMAN BROS., JACKSON, MISS.

The Tenth Annual Meeting of the Association will be held at Vicksburg on the First Tuesday after the First Monday in May, A. D. 1915

Officers for 1914-1915

PRESIDENT

SYDNEY SMITH ..... Jackson

VICE-PRESIDENT

V. A. GRIFFITH ..... Gulfport

SECRETARY AND TREASURER

JAS. R. McDOWELL ..... Jackson

EXECUTIVE COMMITTEE

SYDNEY SMITH (Chairman) ..... Jackson

V. A. GRIFFITH ..... Gulfport

H. B. GREAVES ..... Canton

J. M. STEVENS ..... Hattiesburg

J. Q. ROBINS ..... Tupelo

Committees for 1914-1915

JURISPRUDENCE AND LAW REFORM

E. F. NOEL (Lexington) ..... Chairman
W. F. COOK — W. A. ELLIS
J. W. CUTRER — S. L. GWIN

JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE

G. GARLAND LYELL (Jackson) ..... Chairman
T. F. PAINE — J. H. MIZE
V. R. HOWIE — S. E. TRAVIS

LEGAL EDUCATION AND ADMISSION TO THE BAR

D. W. HOUSTON (Aberdeen) ..... Chairman
PERCY BELL — A. T. STOVALL
CLAYTON D. POTTER — W. C. WELLS, JR.

PROFESSIONAL ETHICS

R. B. CAMPBELL (Greenville) ..... Chairman
J. S. SEXTON — R. H. THOMPSON
E. J. BOWERS — W. C. McLEAN

PUBLICATION

T. J. WILLS (Raleigh) ..... Chairman
WALTER SILLERS, JR. — H. H. CREEKMORE
F. V. BRAHAN — W. S. WELCH

GRIEVANCES

C. P. LONG (Tupelo) ..... Chairman
E. D. DINKINS — W. C. BOWMAN
W. S. KNOTTS — W. A. WHITE

OBITUARIES AND MEMORIALS

J. S. RHODES (Jackson) ..... Chairman
R. J. WEST — JOHN BRUNINI
J. R. BYRD — J. M. VARDAMAN

TO GIVE PUBLICITY TO PROPOSED CONSTITUTIONAL AMENDMENTS INCREASING THE SUPREME COURT

MARCELLUS GREEN (Jackson) ..... Chairman
CLAYTON D. POTTER — D. W. HOUSTON
H. V. WATKINS — D. C. BRAMLETTE

DELEGATES TO AMERICAN BAR ASSOCIATION

E. F. NOEL — C. C. MOODY — S. E. TRAVIS

Alternates

CLAYTON D. POTTER — W. T. McDONALD — A. A. ARMISTEAD

MINUTES

Of the Ninth Annual Meeting of the

Mississippi State Bar Association

Held at Gulfport, Mississippi
April 30 and May 1
1914

FIRST DAY

The President being absent on account of illness, the Ninth Annual Meeting of the Mississippi State Bar Association was called to order by Hon. G. J. Leftwich, Vice President, in the county court house in the City of Gulfport. Mississippi, on Thursday, the 30th day of April, 1914, at 11 o'clock a. m., with a constitutional quorum present.

The opening exercises were as follows:

Invocation by Rev. H. H. Sneed, Rector of the St. Peter's Episcopal Church.

Address of welcome delivered by R. C. Cowan, Esq., of the Gulfport Bar.

Responded to on behalf of the Association by Sivley Rhodes, Esq., of the Jackson Bar.

The address prepared by Hon. R. B. Mayes, President, was read by the Vice President.

On motion it is ordered that the Association adjourn at 1 o'clock until tomorrow afternoon on call of the President.

Report of Secretary and Treasurer, approved by the Executive Committee, showing balance in the treasury on May 25, 1914, of $3,128.68, was adopted.

Report of the Executive Committee showing that it had considered and approved the following applications for membership in the Association was received:

J. W. Backstrom, Leakesville; R. J. Bishop, Hattiesburg; B. C. Bowen, Gulfport; E. J. Bowers, Jr., Gulfport; David Clay Bramlette, Jr., Woodville; O. S. Cantwell, Raleigh; Ellis B. Cooper, Hattiesburg; Homer Currie, Raleigh; O. J. Dedeaux, Gulfport; B. E. Eaton, Gulfport; J. C. Elmer, Gulfport; Ebb J. Ford, Gulfport; Robt. L. Genin, Bay St. Louis; Louis Goldman, Biloxi; D. M. Graham, Gulfport; W. L. Guice, Biloxi; John L. Heiss, Gulfport; L. M. Holmes, McComb City; J. Knox Huff, Mize; W. W. James, Mize; Edgar M. Lane, Taylorsville; J. C. Lawson, Raleigh; J. A. Leathers, Gulfport; Geoffrey Marshall, Bay St. Louis; J. D. Martin, Raleigh; Geo. B. Mixon, Columbia; Sidney C. Mize, Gulfport; V. B. Montgomery, Gulfport; J. M. Morse, Jr., Gulfport; Geo. R. Nobles, Raleigh; U. B. Parker, Wiggins; Walter A. Phillips, Gulfport; V. M. Roby, Tylertown; A. B. Schauber, Laurel; Will P. Searcy, Raleigh; W. A. Shipman, Poplarville; W. T. Simmons, Mize; Geo. L. Teat, Kosciusko; R. S. Tullos, Raleigh; Luther L. Tyler, Brookhaven; W. L. Wallace, Gulfport; T. A. Wood, Gulfport.

No ballot being demanded all of these applicants were declared members of the Association.

Report of the Committee on Legal Education and Admission to the Bar was received.

The Association then adjourned until tomorrow afternoon on the call of the President.

SECOND DAY

Association called to order at 4 p. m. pursuant to the call of the President. Present, as on yesterday.

Executive Committee reported that it had considered and approved the following applications for membership in the Association:

Bidwell Adam, Pass Christian; Forest G. Cooper, Forest; B. P. Hickox, Gulfport; E. R. Holmes, Yazoo City; John W. McCall; M. V. B. Miller, Meridian; J. G. Napier, Poplarville; J. F. Robinson, Wiggins; W. W. Simmons, Cleveland; L. A. Whittington, Meadville; R. D. Wigginton, Ocean Springs.

No ballot being demanded, all of these applicants were declared members of the Association.

Report of the Committee on Professional Ethics was received.

Report of the Committee on Judicial Administration and Remedial Procedure was received and adopted.

Report of the committee appointed at the last annual meeting to present recommendations to the Legislature was received.

Report of the Committee on Obituaries and Memorials was received.

On motion of Clayton D. Potter, Esq., the following resolution was adopted: "Resolved, That the President be directed to appoint five committeemen from the State at large to assist in giving publicity to the proposed constitutional amendments with reference to increasing the Supreme Court.

"Be it further resolved, That said committee appointed

by the President be and is hereby authorized to appoint all necessary sub-committees."

On motion the Association proceeded to the election of officers for the ensuing year, which resulted in the election of: President, Sydney Smith, of the Supreme Court; Vice President, V. A. Griffith, of the Gulfport bar; Executive Committeemen: First district, H. B. Greaves, of the Canton Bar; Second district, J. M. Stevens, Chancellor of the Eighth Chancery district; and Third district, J. Q. Robins, of the Tupelo Bar. Delegates to the next meeting of the American Bar Association: Hon. E. F. Noel of the Lexington Bar, Judge C. C. Moody of the Indianola Bar, and Hon. S. E. Travis of the Hattiesburg Bar; Alternates: Hon. Clayton D. Potter of the Jackson Bar, Judge W. T. McDonald of the Bay St. Louis Bar, and the Hon. A. A. Armistead of the Vicksburg Bar.

On motion Vicksburg was selected as the next place of meeting.

At the request of the Bankers of the Sixth Congressional District of the State of Mississippi, in meeting assembled, Hon. Geo. S. Dodds introduced the following resolution, which was referred to the Committee on Jurisprudence and Law Reform for report thereon at the next meeting:

"It being that the legal status of all credits in the State of Mississippi are fixed by a law known as the Anti-commercial statute, and as the law is very detrimental to good credit in the State, and causes all people engaged in business to suffer a serious deprivation of their rights and full benefits from business transactions, the said law in effect outlawing the negotiability of all instruments dischargeable in the State unless such instruments are payable to 'bearer,' and

"Whereas, the public is prejudiced against executing 'bearer' paper, and that it is undesirable, and best for many reasons that contracts not be payable to 'bearer,' and therefore be negotiable merely by delivery, and

"Whereas, all contracts executed in good faith, and are not fraudulent should be fully negotiable, and

"Whereas, the great commercial development of the State of Mississippi, which establishes so much in common between our people and the outside business world, demands the repeal of our Anti-commercial Statute, and that credits in the State of Mississippi be placed on the same high plane before the law that obligations occupy in other States of the Union, and

"Whereas, this is distinctly a legal question, and a subject that ought to be handled by the Mississippi State Bar Association, the support of such a measure by the State Bar Association being necessary to success;

"Therefore, be it resolved, that we. the bankers of the Sixth Congressional District of the State of Mississippi, in meeting assembled, do hereby petition and request our State Bar Association to consider this matter, and request the next Legislature of the State of Mississippi to enact, and give to the people of Mississippi the Uniform Negotiable Instruments Act, it being the accepted law of the kind by practically all English-speaking people of every country;

"Be it further resolved, that the Vice President of the Mississippi Bankers' Association for this district be, and he is hereby requested to present these resolutions to the Mississippi Bar Association at its next annual convention, which will be held in the City of Gulfport in the near future."

"April 25th, 1914.

"I hereby certify that the above is a copy of the resolutions regularly adopted by the bankers of the Sixth Congressional District of the Mississippi Bankers' Association, in meeting held at Hattiesburg, Miss., April 9th, 1914.

"S. A. BANDI.

"Vice President, Sixth Congressional District."

On motion the thanks of the Association were extended

to the members of the local bar, the press, and the people of the City of Gulfport for courtesies extended to members of the Association during the meeting.

The Association then adjourned.

SYDNEY SMITH,
Secretary.

REPORT OF SECRETARY AND TREASURER

Mississippi State Bar Association

MR. PRESIDENT:

I have the honor to submit the following financial statement:

Balance in Treasury, May 3, 1913	$2,907.85	
Dues for 1913 from 65 members	325.00	
Dues for 1914 from 274 members	1,370.00	
Admission fees for 1914 from 3 applicants for membership	15.00	
		$4,617.85

Disbursements

As per itemized statement filed herewith	1,489.17
Balance in Treasury, April 25, 1914	$3,128.68

(On deposit in First National Bank, Jackson, Miss.)

Respectfully submitted this the 30th day of April, 1914.

SYDNEY SMITH, Secretary and Treasurer.

The foregoing statement, together with itemized statement of disbursements with vouchers therefor, have been examined and found to be correct and approved by the Executive Committee of the Mississippi State Bar Association.

GEO. J. LEFTWICH,
President and Ex-Officio Chairman Executive Committee.

Disbursements

1913		
May	6—Telegram from Association to Mr. Miller	$ 45
May	6—Express on records to Greenwood	.35
May	8—Express on records from Greenwood	.35
May	8—Hotel expense of annual orator	5.50
May	8—Banquet	564.85
May	12—R. N. Miller, for telegram sent in securing annual orator	5.65
May	13—Postage stamps	2.00
May	19—Postage stamps	3.00
June	2—Tucker Printing Company	2.25
June	23—Postage stamps	2.50
July	16—Postage stamps	2.00
July	16—500 envelopes	2.00
July	16—500 letterheads	2.25
July	16—250 Columbian Cl. envelopes	2.75
July	16—Printing, binding and mailing reports	369.42

Aug.	3—Postage stamps	3.50
Sept.	1—Hederman Bros., printing leaflets for Legislature	8.00
Sept.	4—Express on reports to R. N. Miller	.35
Sept.	4—Express on reports to A. T. Stovall	.50
Sept.	4—Express on reports to Blewett Lee	.40
Sept.	4—Hederman Bros., letterheads	2.25
Oct.	21—G. J. Leftwich, expense incurred by him attending Executive Committee on Oct. 15	11.15
Oct.	21—Wm. M. Hamner, expense incurred by him attending Executive Committee on Oct. 15	9.70
Nov.	1—Telephone to G. J. Leftwich	.65
Nov.	1—Postage stamps	1.00
Nov.	6—Postage stamps	4.00
Nov.	6—Six months' salary of Secretary-Treasurer	150.00
Dec.	1—Telegrams to Leftwich, Hamner, Armistead, and Dent	1.00
Dec.	9—Wm. M. Hamner, amount expended attending Executive Committee meeting in New Orleans on 6th inst	28.35
Dec.	9—Robt. B. Mayes, amount expended attending Executive Committee meeting in New Orleans on 6th inst.	5.50
Dec.	9—A. A. Armistead, amount expended attending Executive Committee meeting in New Orleans on 6th inst.	20.37
Dec.	11—Sydney Smith, amount expended attending Executive Committee meeting in New Orleans on 6th inst.	13.11
1914		
Jan.	1—Hederman Bros., circular letter and envelopes	5.25
Jan.	6—Postage stamps	3.50
Jan.	7—Cumberland Tel. Co.	1.65
Jan.	29—Postage stamps	5.00
Feb.	7—A. W. Dent, amount expended attending Executive Committee meeting in New Orleans, Jan. 6	19.23
Feb.	7—Hederman Bros., printing	12.75
Feb.	13—Postage stamps	2.00
Feb.	13—M. L. Melton, stenographic work for Legislative Committee	.50
March	2—Hederman Bros., 500 envelopes	2.00
March	5—Eyrich & Co., Journal	1.00
March	17—Telegram to G. Blancand	.30
March	21—Postage stamps	4.00
March	28—Postage stamps	1.00
April	1—Membership Record Book	7.75

April	3—American Express Co., pkg Lit. from Committee on Arrangements	.58
April	3—American Express Co., pkg. Literature from Committee on Arrangements	.62
April	3—Judge Percy Bell, expense incurred by him in attending meeting of legislative Com.	7.40
April	6—Postage stamps	4.00
April	7—Telephone to C. A. Duchamp, March 25	1.30
April	7—Telephone to V. A. Griffith, April 7	.65
April	7—Express on circular letter from New Orleans	.39
April	8—Telephone message to Gus. Blancand	1.00
April	11—Postage stamps	3.50
April	11—Judge Robt. B. Mayes, Ex. of Tel. to V. A. Griffith	.65
April	17—Express from New Orleans	.50
April	18—Postage stamps	7.50
April	18—G. D. Plunkett, stenographic work on circulars	5.00
April	18—C. B. Howard, stenographic work on circulars	5.00
April	20—Hederman Bros., printing letterheads and circulars	6.50
April	21—Telephone to Griffith, Leftwich, Armistead, Hamner and Dent	3.50
April	25—Salary Secretary-Treasurer 6 months	150.00
		$1,489.17

THE REPORT OF THE COMMITTEE ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE.

Mr. President:

While there is now and ever will be necessity for improvement, it cannot be denied that our jurisprudence has reached a comparatively high state of perfection. Making due allowance for our own partiality, we do not hesitate to say that our system of law is in many respects superior to that of any other State in the Union. It is with some degree of pride, but we hope without any spirit of boasting, that we assert that the growth and improvement of the system has been mainly due to the learning, unselfishness and patriotism of the members of our profession. There never was a greater fallacy than is involved in the charge sometimes thoughtlessly but ignorantly made to the effect that lawyers aid in the enactment of complicated and conflicting laws, with the selfish end in view of bringing about confusion and resultant litigation. The very reverse of this is true, as will readily occur to any thoughtful person who is familiar with the history of legislation and the development of the law in this State. The records of our own Association and of the like organization that preceeded it some years ago, as well as those of the various local bar associations, afford eloquent and conclusive testimony to the earnest and unselfish work of the bar, in all of its organized efforts to secure needed reforms in the law, to simplify remedies, to prevent delay, and to reduce litigation to a minimum. Let one who doubts this read the earnest, patriotic addresses of our various Presidents, the recommendations contained in the reports of the committees and the many thoughtful and splendid papers that constitute the record we have made. Without a single exception or note to the contrary, these bear out convincingly the assertions we have made. As further evidence of the truth of this, and as showing the earnestness of our efforts and their efficacy in bringing about reforms in our substantive law and in methods of procedure, many instances in legislation and changes in the constitution might be cited if time would permit. By way

of illustration, let us refer to one of many important changes made by the constitution of 1890. Prior to that time, as will be remembered by the older members, in our Bar Association, we debated at several successive meetings, the then vexing question of abolishing the distinction between law and equity as to matters of procedure. It seemed impossible for us to agree on this subject and consequently no definite or positive action was taken by the Association. When the constitutional convention met there was in that splendid body many of the most learned and distinguished lawyers of the State, men who were really great, many of whom had taken part in the discussions we have mentioned. Among numerous excellent provisions that were adopted and embodied in the fundamental law, were those directing the transfer of cases from a court of law to the chancery court, and **econverso**, where hapless suitors had perchance gotten into the wrong court. and the inhibition of the reversal on appeal of any judgment or decree by reason of error arising out of a distinction between law and equity jurisdiction. By these simple provisions a great forward step was taken and a vast volume of useless and expensive litigation was forever prevented. There can be no room for doubt, in the first place, that this beneficent change was really wrought by lawyers, and, secondly, that the ideas involved and which led up to the change, grew directly out of the previous discussion on the subject in the State Bar Association.

These reflections should gratify and encourage us and afford inspiration for continued efforts on our part in the line of reform and improvement.

The occasions of these meetings of the body of trained and honorable men who constitute this Association afford special opportunity for demonstration of our devotion to professional duty as well as the fulfillment of our obligations to the State and our earnest desire to carry into effect the declared aims and purposes of our splendid organization.

It is to be remembered that our system of jurisprudence

is not a mere creation; it has grown like the oaks. With true professional zeal and unselfish public spirit, it should be our constant endeavor, as it has ever been in the past, not only to guard and preserve the system, but from time to time to add to its symmetry and perfection. So far from encouraging the enactment of mere technical laws and the adoption of complicated modes of procedure, it has been the constant aim of the profession to simplify the law, and the courts have been urged always to be more intent on the speedy administration of substantial justice than in the upholding of mere artificial or technical rules.

While the lawyer in the particular case is always jealous of the rights of his client, and, like the client himself, is insistent to the last degree upon the enforcement of technical rules where the client's rights are involved, the profession notes with genuine pleasure the tendency of the members of the bar and of the courts to look mainly to the administration of substantial justice in the administration of the law.

With the exception of the over-crowded condition of the supreme court docket and the unavoidable delay this has involved, it may be stated that our judicial machinery is working with a fair degree of smoothness and efficiency. We do not consider that many legislative changes are desirable or necessary. There is often a tendency on the part of those seeking reform to urge numerous and sometimes radical changes. We do not consider that this is the wise or effective course, for it results that few legislative changes are secured, and thus it is that frequently worthy and unworthy measures go down together.

We think that there should be real concern to prevent the enactment of some so-called remedial legislation that has been proposed. Among these, we desire to designate the subject of instructions to juries. A most radical change as to this has been recommended by a convention of judges held last year. With great deference to the learning and high character of our judicial officers who have suggested this change, we can-

not yield our settled convictions by giving assent to it. We do not believe that trial judges should be permitted to sum up or comment on the evidence, or to give instructions of their own motion. The attorneys in a case who have given to its preparation careful thought and attention are far better qualified to determine what the law is as applicable to that particular controversy than is the presiding judge. It would require great learning and experience on the part of the trial judge to enable him to have even approximately the knowledge of the law applicable to the case possessed by counsel engaged in it, and to qualify him to give the jury, off-hand, the proper rules of law for their guidance, when perhaps he had never heard of the case until reached on the call of the docket. The good lawyer, while insisting on the proper presentation by instructions of his client's theory of the case, is not likely to ask improper or erroneous instructions, for obtaining such, as he knows, would most likely lead to a reversal. For the same reason he is deterred from objecting to proper instructions asked for by the other side. Thus it is that under the present system the law is most likely to be properly presented in the trial of every case. It is to be remembered that the judge under our existing system is armed with the power to refuse, modify, or even substitute, instructions. With these safeguards, we think a fair trial on the law applicable to the case is more apt to be had in the great majority of the trials than if the judge should be permitted to give instructions of his own motion. In carefully preparing instructions in the light of the evidence counsel on the trial of every case each exercises in a sense a judicial function. Practice under this system has furnished a legal training for Mississippi lawyers for which they are noted and which has made them almost universally eminent and successful when they have gone to other States to practice their profession.

We wish to renew the recommendation contained in the report of our predecessors on this committee to the association in 1912, to the effect that in civil suits, there should be no trial by jury unless one of the litigants should at least two days before the case is called for trial, file a written request therefor. We believe this would greatly lessen cost and

litigation both in the circuit courts and in the supreme court.

We recommend that Section 3937 of the Code of 1906 be so amended as to provide that writs of attachment for replevin, and all other remedial process, should be addressed simply "to any legal officer," and that any proper officer in any county into whose hands such process may properly come, shall execute the same. There can be no reason why process should be directed to the sheriff of any particular county, whereas cases may be imagined wherein loss or delay would be occasioned by reason of having to obtain alias or duplicate writs addressed to the officer of a particular county.

It being agreed by all that it is impossible for the supreme court as at present organized to properly dispatch the vast and increasing amount of business that goes to it, and that relief of the court is absolutely necessary; and it appearing that there is offered no other practicable and available means of relief, we beg to urge upon the people of Mississippi the very great importance of adopting at the polls the pending constitutional amendment providing for additional judges, to the end that litigants may not further suffer the consequences of the inevitable delay caused by an over-crowded docket, which, under present conditions, is certain to become more and more congested.

Respectfully submitted,

L. BRAME, Chairman,
F. H. LOTTERHOS,
A. W. SHANDS,
E. J. FORD,
T. BRADY,

Committee.

REPORT OF THE COMMITTEE ON LEGAL EDUCATION AND ADMISSION TO THE BAR.

To the Mississippi State Bar Association:

Your Committee on Legal Education and Admission to the Bar begs leave to submit the following report:

By Article 2 of the constitution of this Association, the objects of the Association are declared to be:

1st. To foster legal science.

2nd. To maintain the honor and dignity of the profession of law.

3rd. To cultivate professional ethics and social intercourse.

4th. To promote improvements in the law and the modes of its administration.

Noble purposes are these, and well should we, here on this our ninth anniversary, take a retrospect and see how far we have fallen short of these declared objects, and determine how we may better advance them in the future.

How can this Association foster legal science, maintain the honor and dignity of the profession of law, cultivate professional ethics and social intercourse, and promote improvements in the law and the modes of its administration better than by insisting on a more thorough training of the men who come to the bar? Or by seeing to it that those charged under the law as it is now with the responsibility of admitting new members to the bar, should surely have the required qualifications themselves? Your committee has annually recommended legislation to advance the objects of this Association, but in vain. At the last annual meeting the Association adopted a report of a special committee to draft a law relative

to the admission of applicants to the bar, and that law, as drafted by that committee and approved by the Association, was a good one, and would have advanced the objects of the Association very materially had not the Legislature, in its wisdom, seen fit to see that it was not enacted into law. So, as far as legislation is concerned, we are just where we were a year ago, or, in fact, many years ago. But where the standards of the profession are concerned we are not where we were.

Your committee is of the opinion that, in view of the Legislature's action in regard to this bill, it is their duty to help themselves more, and in that way in a degree help the profession and the State; in this wise: that the bar unite in selecting good capable judges and chancellors in the coming election, and not support any lawyer for these offices who will not see to it that immoral and uneducated men are kept from the practice of law in Mississippi. Unprincipled and ill-trained lawyers create unnecessary litigation, lose their clients' cases by their blunders, and otherwise sacrifice their clients' rights, waste the time of the courts, and impose upon taxpayers needless burdens. They cost the community too much in time and money to be entitled to any consideration from this Association.

The admission to the bar of an unprepared lawyer is a wrong to the State, the profession, and to the applicant himself, in that if he is admitted before he is properly trained, he becomes a cheap lawyer whose blunders are a hindrance to the administration of justice, to the State and to himself, and he is a discredit to his community. We have enough unworthy and ill-prepared members already. A justice of the Supreme Court of the United States said some years ago, in speaking before the American Bar Association, that it would be a blessing to the profession and to the world if a deluge could engulf one-half of those who hold a license to practice law. His opinion was based on a wide experience and on exceptional opportunities. Before his appointment to the Supreme Court of the United States he had for many years been

a State judge, and also for a number of years a circuit judge of the United States. And while this committee is not prepared to endorse his statement of so large a proportion of unworthy lawyers in Mississippi, yet it is prepared to approve of the method of extermination, and to set the standard higher in morality, general culture, and professional attainments for those desiring admission to our bar.

Unless the profession of law is willing to surrender its proud position in Mississippi, it must not allow other professions to out-rank it in standards. Already the medical profession is keenly alive to the importance of a higher standard of education and morality for those who are entering its ranks. So it behooves us to bestir ourselves and see to it that only high-toned, moral and educated applicants are admitted to the bar of Mississippi. To do this effectively it will be necessary for the bar as a unit to get behind the act this Association approved at the meeting in Greenwood in 1913, entitled, "An Act to Establish a State Board of Examiners to Regulate Admissions of Persons to Practice Law," etc., and pull together for its enactment at the next session of the Legislature.

It is the judgment of your committee that this draft of an act on this subject can be enacted into law if this Association will take an active interest in the measure, as the medical profession did in its measure, even at the risk of being criticised by the shyster lawyer and ignorant layman. Are the members of the Mississippi bar willing to have their standards lower than those of their sister States and sister professions? The committee is of the opinion that they are not. Yet, unless they wake up and bestir themselves they will be confronted with just that condition of things. To be perfectly frank with the Association, your committee is apprehensive at the showing Mississippi will make in the forthcoming report of the Carnegie Foundation on teaching.

Your committee is advised that the American Bar Association at its annual meeting in Montreal, Canada, last August approved of the action of its Committee on Legal Educa-

tion and Admission to the Bar, in inviting the Carnegie Foundation for the Advancement of Teaching to investigate the subject of legal education and admission to the bar in this country and Canada, and report as it did on the medical profession, and that Dr. Harry S. Pritchett, President of the Carnegie Foundation, had accepted this invitation and request, and had made arrangements to further the work. The Foundation has announced that its investigation will cover not only the examination of the law schools of the country and the various curricula of those schools, and their libraries and facilities for teaching, but that it expects to bring under consideration the relation of the legal profession to the administration of law, and to the obligations of the social regime; and to trace the evolution of the legal profession in the United States and its relation to legislation and administration, and the relation of the number of lawyers to the amount of litigation, and the cost of the legal process, all of which will be well done, as the Foundation has the means and ability to do it. And such report will be accepted as it was in the case of the medical profession, and will do great good.

Your committee is pleased, and is sure this Association will be pleased to know that the University of Mississippi curriculum and methods of teaching law are recognized as among the best in the South, in fact rank third in the Southern States, outclassed only by the University of Virginia and the University of Texas. Having such opportunities only increases our responsibility, and makes us more censurable for not requiring a higher standard for admission to the bar, and being rigid in its enforcement. As your committee has said before, it will all redown to the good of the State and the profession, in both of which your committee is sincerely interested.

In conclusion, your committee desires to approve and recommend the reports of former committees on this subject, and especially to urge the adoption of the draft of the law approved at the last meeting of the Association, entitled, "An

Act to Establish a State Board of Examiners to Regulate Admissions of Persons to Practice Law."

A. T. STOVALL, Chairman,
J. M. BOONE,
G. G. LYELL,
THOS. FITE PAINE,
J. S. RHODES.

REPORT OF THE COMMITTEE ON PROFESSIONAL ETHICS.

To the Mississippi State Bar Association:

Your Committee on Professional Ethics respectfully reports that no question relating to professional ethics has been submitted to it for consideration, since its appointment; and it makes report of that fact, in order that it may be made to appear that the committee has not been unmindful of the duty, devolved upon it, to answer such questions as may have been submitted to it, and to report to the Association its answers thereto.

R. B. CAMPBELL, Chairman.

REPORT OF THE COMMITTEE OF OBITUARIES.

To the Mississippi State Bar Association:

Your committee respectfully begs leave to make the following report:

Whereas since the last meeting of this Association we have lost by death the following members, to-wit: Hon. Wirt Adams of Jackson, Miss.; Judge G. Q. Hall of Meridian, Miss., and Hon. Z. P. Landrum of Columbus, Miss.;

Whereas these departed members were lawyers of sterling qualities who strove at all times to uphold the honor and to maintain the dignity of the profession and were lawyers who found their highest honor in their deserved reputations for

fidelity to private trust and to public duty as honest men and patriotic and loyal citizens;

Whereas by their death this Association and the State at large have suffered severe loss; therefore be it resolved,

1st, That the Mississippi State Bar Association extend to the families of the deceased its deepest sympathy in their grief and loss; 2d, That a copy of this resolution be spread upon the minutes of this Association as a memorial.

Respectfully submitted,

THOS. F. PAINE,
Acting Chairman.

REPORT OF THE LEGISLATIVE COMMITTEE.

To the Mississippi State Bar Association:

Your committee, appointed at the last annual meeting of the Association in May, 1913, to present to the Legislature of 1914, and attempt to have enacted into laws, the recommendations and suggestions approved by this Association at its said meeting, beg leave to report that they regret that they did not succeed in getting such recommendations and suggestions enacted into laws.

However, the Legislature did pass concurrent resolutions submitting to the people at an election to be held in November, 1914, an amendment to the constitution, providing in the alternative for six (6) supreme court judges to be elected by the people or to be appointed as now provided by the constitution, and copies of said resolutions are herewith filed as parts hereof.

Respectfully submitted,

D. W. HOUSTON, Chairman,
PERCY BELL,
MARCELLUS GREEN,
W. H. WATKINS,
Committee.

MEMBERS REGISTERED AT THE NINTH ANNUAL MEETING, 1914.

Armistead, A. A.
Ames, C. F.
Adams, L. M.
Alderman, J. E.
Adam, C. B.
Anderson, W. D.
Boone, J. M.
Baskin, W. E.
Brahan, F. V.
Bell, Percy
Barbour, J. F.
Bryson, J. C.
Bloomfield, H.
Backstrom, J. W.
Bowers, E. J.
Bowers, E. J., Jr.
Bowman, W. C.
Barrett, T. H.
Brame, L.
Brady, T., Jr.
Bowen, B. C.
Ballenger, J. I.
Brewer, Earl
Brown, M. D.
Bozeman, A. S.
Bishop, R. J.
Campbell, T. H.
Cutrer, R. W.
Cowan, R. C.
Creekmore, H. H.
Cook, W. F.
Clifton, W. H.
Cantwell, O. S.
Cooper, Forest G.
Dent, E. L.
Dent, R. L.
Dent, A. W.
Dobbs, S. B.
Dedeaux, O. J.
Dodds, Geo. S.
Denny, W. M., Jr.
Engle, Chas. F.
Ellis, W. A.
Everett, F. E.
Elmer, J. C.
Eaton, B. E.
Estopinal, Wm.
Frierson, John F.
Flowers, J. N.
Ford, E. J.
Greaves, H. B.
Griffith, V. A.
Green, Marcellus
Graham, D. M.
Gillespie, J. O.
Goldman, Louis
Glass, F. M.
Gardner, Hanun
Grace, M. B.
Genin, Robert L.
Hannah, T. C.
Houston, D. W.
Hickox, B. P.
Hamner, W. M.
Holmes, E. R.
Heidelberg, D. W.
Heiss, John L.
Hill, N. C.
Hirsh, J.
Harrell, E. B.
Howie, Virgil
Hale, C. H.
Jackson, R. E.
Knotts, W. S.
Kier, W. H.
Kimbrough, A. McC.
Kimbrough, O. L.
Kimbrough, D. M.
Lyell, G. G.
Luckett, O. A.
Lee, F. C.
Lotterhos, F. H.
Leftwich, G. J.
Miller, C. C.
Moody, C. C.
Morse, J. M., Jr.

Miller, M. V. B.
Miller, T. M.
Marshall, Carl
Marshall, Geoffrey
Merrill, G .H.
Montgomery, V. B.
Mize, S. C.
Mize, J. H.
McIntosh, D. A.
McIntosh, H. M.
McDonald, W. A.
McDonald, Will T.
McDowell, Jas. R.
McMillon, J. L.
McSwain, C. A.
McCall, John W.
Noel, E. F.
Neill, S. D.
Napier, J. G.
Owen, Frank C.
Paine, Thos. F.
Pegram, Thos. E.
Pepper, A. M.
Parker, U. B.
Potter, W. H.
Potter, Clayton D.
Price, J. H.
Phillips, W. A.
Reid, Nowland M.
Ratcliff, E. H.
Rowe, Vernon D.
Rhodes, J. S.
Robins, J. Q.
Robinson, J. F.
Ratliff, P. D.
Reed, Richard F.
Ross, J. C.
Smith, Sydney
Somerville, A. D.
Sanders, J. O. S.
Somerville, Thos. H.
Stone, W. I.
Stone, W. E.
Stone, Alfred
Simmons, W. W.
Stevens, J. Morgan
Stevens, H. S.
Saunders, M. A.
Street, C. S.
Sexton, J. S.
Street, Orbrey
Sweat, W. C.
Shauber, A. B.
Shands, A. W.
Stovall, A. T.
Thompson, R. H.
Teat, George L.
Teat, J. A.
Tullos, R. S.
Trenholm, E. L.
Travis, S. E.
Taylor, J. L.
Tubb, C. L.
Wallace, W. L.
Wills, T. J.
Wasson, Ben F.
Wood, C. H.
Wood, T. A.
Whittington, Luther A.
Whittington, W. M.
White, W. A.
Welsh, W. S.
Wigginton, R. D.
Yerger, Rucks

HONORARY MEMBERS.

SUPREME COURT.

Sydney Smith, Chief Justice.....Jackson
Sam C. Cook, Associate Justice.....Jackson
Richard F. Reed, Associate Justice.....Jackson

FEDERAL JUDGE.

H. C. Niles.....Kosciusko

CIRCUIT JUDGES.

First District	Claude Clayton	Tupelo
Second District	J. I. Ballenger	Gulfport
Third District	Hugh K. Mahon..	Holly Springs
Fourth District	Frank E. Everett....	Indianola
Fifth District	James A. Teat.....	Kosciusko
Sixth District	R. E. Jackson.....	Liberty
Seventh District	W. A. Henry.....	Yazoo City
Eighth District	A. J. McLaurin	Brandon
Ninth District	E. L. Brien	Vicksburg
Tenth District	John L. Buckley....	Enterprise
Eleventh District	W. A. Alcorn	Clarksdale
Twelfth District	J. M. Arnold	Ellisville
Thirteenth District	W. H. Hughes	Raleigh
Fourteenth District	J. B. Holden	Summit
Fifteenth District	A. E. Weathersby	Columbia
Sixteenth District	T. C. Kimbrough....	West Point
Seventeenth District	J B. Eckles.....	Sardis

CHANCELLORS.

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Second District	Sam Whitman, Jr...	Bay Springs
Third District	J. G. McGowen....	Water Valley
Fourth District	R. W. Cutrer.....	Magnolia
Fifth District	P. Z. Jones.....	Brookhaven
Sixth District	J. F. McCool.....	Kosciusko
Seventh District	M. E. Denton.....	Marks
Eighth District	J. M. Stevens.....	Hattiesburg
Ninth District	E. N. Thomas.....	Greenville
Tenth District	D. M. Russell.....	Magee

ROLL OF MEMBERS OF MISSISSIPPI STATE BAR ASSOCIATION.

Armistead, A. A.....Vicksburg
Anderson, W. D.....Tupelo
Ames, C. F.....Hattiesburg
Adams, L. M. .....Ackerman
Adam, C. B.....Pass Christian
Alderman, J. E. ....Leakesville
Boddie, Van B. .....Greenville
Bell, Percy .....Greenville
Boone, J. M. .....Corinth
Brewer, Earl .....Jackson
Bowers, E. J. .....Gulfport
Brown, E. E. .....Natchez
Barnett, D. R. .....Yazoo City
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Baker, J. H. .....Indianola
Boggan, J. W. P. .....Tupelo
Baskin, W. E. .....Meridian
Buescher, H. S. ....Hattiesburg
Brandon, Gerard .....Natchez
Bowman, W. C. .....Natchez
Byrd, J. R. .....Newton
Bozeman, A. S.....Meridian
Brahan, F. V. .....Meridian
Barbour, J. F. ....Yazoo City
Bates, J. L. .....Pittsboro
Bonelli, Albert M. ...Vicksburg
Brady, T. Jr. .....Brookhaven
Brame, L. .....Jackson
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Boatner, Frank .....Sumner
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Brunini, John .....Vicksburg
Banks, G. H. .....Newton
Baker, J. A. .....Jackson
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Backstrom, J. W. ..Leakesville
Bradford, J. W. ....Itta Bena
Bishop, R. J. .....Hattiesburg
Breland, E. W. ....Leakesville
Bloomfield, H. .....Gulfport
Bowers, E. J. Jr. .....Gulfport
Bowen, B. C. .....Gulfport
Barrett, T. H. .....Gulfport
Bramlette, D. C. Jr. ..Woodville
Brien, E. L. .....Vicksburg
Campbell, R. B. ....Greenville
Cutrer, J. W. .....Clarksdale
Cassidy, J. J. ....McComb iCty
Cook, W. F. .....Hattiesburg
Cooper, A. W. .....Forest
Catchings, T. C. ....Vicksburg
Catchings, O. W. ....Vicksburg
Clark, C. W. .....Clarksdale
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Campbell, T. H.....Yazoo City
Clayton, Claude .....Tupelo
Crum, C. Lee ....New Albany
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Cowan, R. C. .....Gulfport
Cashin, J. M. .....Greenville
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Cunningham, Jas. A., Booneville
Clifton, W. H. .....Aberdeen
Cantwell, O. S. .....Raleigh
Currie, Homer .....Raleigh
Campbell, T. H. Jr., Yazoo City
Cooper, F. G. .....Forest
Denny, W. M. .....Scranton
Denny, W. M. Jr. ....Scranton
Davis, J. A. .....Kosciusko
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Davis, Silas W. .....Jackson
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Dodd, S. L. .....Kosciusko
Dunn, C. C. .....Meridian
Dent, R. L. .....Vicksburg
Dinkins, E. D. .....Charleston
Dodds, Geo. S. .....Gulfport
Dobbs, S. B. .....Ackerman
Dulaney, J. W. Jr. ..Greenwood
Dent, E. L. .....Collins
Dent, A. W. .....Mendenhall
Ellis, W. A. .....Carthage
East, W. J. .....Senatobia
Engle, Chas. F. .....Natchez
Estopinal, Wm. .....Gulfport

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Easterling, L. F. .....Jackson
Elmer, J. C. .....Gulfport
Evans, W. G. .....Gulfport
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Everett, F. E. .....Indianola
Ford, J. I. .....Pascagoula
Fox, A. F. .....West Point
Frierson, Jno. F. ....Columbus
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Foote, A. K. .....Canton
Ford, J. H. .....Houston
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Ford, E. J. .....Gulfport
Farley, L. J. .....Oxford
Flowers, J. N. .....Jackson
Green, Marcellus .....Jackson
Gardner, A. F. .....Greenwood
Geisenberger, A. H.....Natchez
Glass, F. M. .....Vaiden
Griffith, V. A. .....Gulfport
Gwin, S. L. .....Greenwood
Greaves, H. B. .....Canton
Gibert, J. M. .....Shaw
Garnett, Chas. L. ....Columbus
Gary, Hugh L. .....Charleston
Gully, J. B. .....Louisville
Gould, H. A. .....Eupora
Goldman, Louis .....Biloxi
Graham, D. M. .....Gulfport
Genin, Robert L. ..Bay St. Louis
Gillespie, J. O. .....Gulfport
Gardner, Hanun .....Gulfport
Grace, M. B. .....Greenwood
Hirsh, J. .....Vicksburg
Houston, D. W. .....Aberdeen
Hibbler, T. G. .....Pascagoula
Hibbler, Stacy ....West Point
Hall, Wm. M. ..Memphis, Tenn.
Hartman, M. M. .... Greenville
Houston, S. M. .....Meridian
Hirsh, J. K. .....Vicksburg
Harris, J. B. .....Jackson
Hilbun, Henry .....Laurel
Hannah, T. C. .....Hattiesburg
Hardee, W. G. .....Cleveland
Howie, V. R. .....Jackson
Hilton, R. T. .....Mendenhall
Haman, Thos. L. Jr ..Pittsboro
Hale, C. H. .....Columbus
Hemingway, J. G. ..Carrollton
Hamner, W. M. .....Greenwood
Harrell, E. B. .....Canton
Holden, J. B. ....McComb City
Hilton, W. D. .....Mendenhall
Hill, N. C. .....Hattiesburg
Henry, Pat .....Vicksburg
Hickox, B. L. .....Gulfport
Huff, J. Knox .....Mize
Heiss, John L. .....Gulfport
Heidelberg, D. W. ...Shubuta
Holmes, E. R. ....Yazoo City
Hathorne, F. C. ....Hattiesburg
Holmes, L. M. ....McComb City
Ivy, G. T. .....West Point
Johnson, Elbert .....Indianola
Jacobson, Gabe .....Meridian
Jones, P. Z. .....Brookhaven
Jones, Fontaine .....Rosedale
Jordan, R. A. .....Indianola
Jones, J. D. .....Newton
Johnston, O. G. .....Clarksdale
James, W. W. .....Mize
Knotts, W. S. .....Belzoni
Kimbrough, O. L. ...Greenwood
Kimbrough, A. McC., Greenwood
Kimbrough, D. M. .....Oxford
Kaufman, M. L. .....Rosedale
Kier, W. H. .....Corinth
Kimbrough, T. C. ..West Point
Long, C. P. .....Tupelo
Landau, M. D. .....Vicksburg
Lotterhos, F. H. ..McComb City
Leftwich, George J. ..Aberdeen
Loeb, Carrol S. ....Hazlehurst
Lindholm, P. P. ....Lexington
Lyell, G. Garland ....Jackson
Lamb, W. J. .....Corinth
Lawson, J. C. .....Raleigh
Lane, Edgar M. ....Taylorsville
Lee, Frank C. ....McComb City
Luckett, O. A. .....Kosciusko

Magruder, W. W. . . . . Starkville
Mortimer, T. E. . . . . Belzoni
Montgomery, F. A. . . . . Tunica
Marshall, Carl . . . . Bay St. Louis
Miller, C. C. . . . . Meridian
May, Geo. W. . . . . Jackson
Moody, C. C. . . . . Indianola
Mahon, H. K. . . . . Holly Springs
Mayes, Edward . . . . . Jackson
Maynard, G. F. . . . . Clarksdale
Montgomery, F. H. . . . . Sardis
Moore, Thomas . . . . . Jackson
Montgomery, Roger . . . . Tunica
Morrison, S. A. . . . . Grenada
Magee, G. Wood . . . . Monticello
Mize, J. H. . . . . Gulfport
Martin, W. C. . . . . Natchez
Mayes, Robert B. . . . . Jackson
Martin, J. D. . . . . Raleigh
Marshall, Geoffrey, Bay St. Louis
Morse, J. M. Jr. . . . . Gulfport
Miller, M. V. B. . . . . Meridian
Merrill, G. H. . . . . Collins
Montgomery, V. B. . . . . Gulfport
Mize, S. C. . . . . Gulfport
McMillon, J. L. . . . . Carthage
McMorrough, G. H. . . Lexington
McDonald, W. A. . . . . Ashland
McIntosh, D. A. . . . . Collins
McIntosh, H. M. . . . . Collins
McClurg, Monroe . . . Greenwood
McFarland, B. H. . . . . Aberdeen
McBeath, J. M. . . . . Meridian
McBee, R. C. . . . . Greenwood
McDonald, W. T. . . Bay St. Louis
McClellan, J. J. . . . . West Point
McDowell, Jas. R. . . . . Jackson
McKay, W. S. . . . . Vicksburg
McLaurin, R. L. . . . . Vicksburg
McSwain, C. A. . . . New Augusta
McCabe, H. C. . . . . Vicksburg
McCall, J. W . . . . . Meridian
McKeigney, A. F. . . . . Winona
McGowen, J. G. . . Water Valley
McLaurin, A. J. . . . . Brandon
Noel, E. F. . . . . Lexington
Nash, Wiley N. . . . . Starkville
Neill, S. D. . . . . Indianola
Neville, J. H. . . . . Gulfport
Niles, J. A. . . . . Kosciusko
Nobles, Geo. R. . . . . Raleigh
Napier, J. G. . . . . Poplarville
Owen, F. C. . . . . Columbus
Oldham, L. E. . . . . Oxford
Paine, Geo. C. . . . . Aberdeen
Percy, LeRoy . . . . . Greenville
Percy, W. A. . . . . Greenville
Pepper, A. M. . . . . Lexington
Price, J. H. . . . . Magnolia
Power, Geo. B. . . . . Jackson
Perrin, J. S. . . . . Yazoo City
Pegram, T. E. . . . . Ripley
Powell, W. H. . . . . Canton
Potter, W. H. . . . . Jackson
Pollard, R. V. . . . . Greenwood
Powell, Robert . . . . . Jackson
Paine, Tom Fite . . . . . Aberdeen
Potter, Clayton D. . . . . Jackson
Parker, U. B. . . . . Wiggins
Phillips, W. A. . . . . Gulfport
Quinn, D. M. . . . . Indianola
Quin, Percy E. . . . McComb City
Rowe, Vernon D. . . . . Winona
Robbins, N. Vick . . . . Vicksburg
Reed, Richard F. . . . . Jackson
Ratcliff, E. H. . . . . Natchez
Ricketts, J. B. . . . . Jackson
Ratliff, P. D. . . . . Jackson
Rhodes, J. Sivley . . . . . Jackson
Ross, J. C. . . . . Gulfport
Roberts, J. C. . . . . Cleveland
Ronan, S. T. . . . . Greenville
Roane, A. G. . . . . Grenada
Reed, N. M. . . . . Canton
Robinson, J. F. . . . . Wiggins
Robins, J. Q. . . . . Tupelo
Roby, V. M. . . . . Tylertown
Sexton, J. S. . . . . Hazlehurst
Sykes, E. O. Jr. . . . . Aberdeen
Stone, Jas. . . . . Oxford
Stone, W. E. . . . . Oxford
Sillers, Walter . . . . . Rosedale

Stovall, A. T. .....Okolona
Sivley, C. L. .....Chicago, Ill.
Somerville, T. H. ...University
Shands, A. W. .....Sardis
Scott, Chas. .....Rosedale
Scott, D. A. .....Clarksdale
Shannon, C. R. .....Laurel
Stevens, H. S. ....Hattiesburg
Sisson, T. U. .....Winona
Stevens, J. M. .....Hattiesburg
Stone, W. I. .....Coffeeville
Sharpe, E. C. .....Booneville
Shields, Walton ....Greenville
Sillers, Walter Jr. ....Rosedale
Somerville, Robert N., Rosedale
Saunders, M. A. .....Starkville
Sanders, J. O. S. .....Jackson
Somerville, A. D. ....Cleveland
Stirling, J. B. .....Jackson
Sweat, W. C. .....Corinth
Strauss, D. S. .....Greenville
Street, Orbrey .....Ripley
Slough, C. E. .....Oxford
Stone, V. Alfred ...Greenwood
Street, C. S. .....Laurel
Street, J. C. .....Laurel
Shipman, W. A. ....Poplarville
Smith, Sydney .....Jackson
Searcy, Will P. .....Raleigh
Simmons, W. T. .....Mize
Simmons, W. W. ....Cleveland
Schauber, A. B. .....Laurel
Satterfield, M. M. ..Port Gibson
Travis, S. E. .....Hattiesburg
Teat, J. A. .....Kosciusko
Tubb, C. L. .....Aberdeen
Truly, Jeff .....Natchez
Thompson, R. H. .....Jackson
Thomas, E. N. .....Greenville
Tucker, W. F. .....Woodville
Tindall, Ben .....Clarksdale
Trenholm, E. L. .....Jackson
Truly, E. G. .....Fayette
Turnage, A. H. .....Moorehead
Terral, S. H. .....Quitman
Taylor, J. L. .....Gulfport
Tullos, R. S. .....Raleigh
Teat, Geo. L. .....Kosciusko
Tyler, Luther L. ..Brookhaven
VanCourt, E. J. ..Eufaula, Okla.
Witherspoon, S. A. ....Meridian
Witherspoon, S. A. Jr., Meridian
Wells, W. Calvin .....Jackson
Wells, W. Calvin Jr. ..Jackson
Worsham, B. F. .....Corinth
Whittington, W. M...Greenwood
Woods, E. H. .....Rosedale
Wynn, J. H. .....Greenville
Wasson, B. F. .....Greenville
White, W. A. .....Biloxi
Welch, W. S. .....Laurel
West, Fred M. .....Jackson
Wilson, Julian C. Memphis, Tenn
Whitfield, G. Q. .....Jackson
Weiner, J. .....Durant
Wells, Ben H. .....Jackson
Williams, J. L. .....Indianola
Wilson, G. A. .....Lexington
Wood, C. H. .....Moss Point
Williams, E. G. ..McComb City
Watkins, W. H. .....Jackson
Wilbourn, R. E. .....Meridian
Wilson, H. J. .....Hazlehurst
Wills, T. J. .....Raleigh
West, R. J. .....Okolona
Watkins, T. J. .....Clarksdale
Wright, C. M. .....Meridian
Watts, W. D. .....Indianola
Ward, R. L. .....Sumner
Watkins, H. V. .....Jackson
Wynn, W. T. .....Greenville
Watson, Lamar ....Greenville
Woodward, A. Y. ....Louisville
Wood, T. A. .....Gulfport
Wigginton, R. D...Ocean Springs
Wallace, W. L. .....Gulfport
Williams, John Sharp, Yazoo City
Whittington, L. A. ..Meadville
Young, M. W. .....Corinth
Yerger, L. P. .....Greenwood
Yerger, Rucks .....Gulfport

Ninth Annual Banquet
Mississippi State Bar Association

Friday, May the First, Nineteen Fourteen

Great Southern Hotel

Gulfport, Miss.

Menu

"Bring hunger. It is the best sauce."

Martini Cocktail

Oysters on Shell

Clear Green Turtle, Madeira Flavor

Vino de Pasto

Sheephead, White Wine Sauce

Cucumbers, Potatoes a la Dauphine

Dry Sauterne

Medallion de Boeuf, Richelieu Sorbet a l'Americaine

Burgandy

Capon Eglantine Asparagus a la Hollandaise

Roederer Grand Vin Sec

Pigeon Roti, sur socle Salade Great Southern

Biscuit Glace Petit Fours Bonbons

Cheese Assorted

Cafe Noir Cigars Cigarettes

Cognac

"Fate cannot harm me,
I have dined today."

Toasts

WELCOME .. .. ROBERT B. MAYES

THE TOASTMASTER .. .. BENJAMIN W. KERNAN

"To try thy eloquence, now 'tis time."—Shakespeare

MISSISSIPPI .. .. JOE HIRSCH

"Water, water everywhere."—Coleridge

LOUISIANA .. .. GEORGE H. TERRIBERRY

"....A land where there is no winter, where
flowers always bloom and birds always sing."—Beecher.

JUDGES AND LAWYERS .. .. .. PRIVATE JOHN ALLEN

"The hope of all who suffer
The dread of all who wrong."—Whittier

THE NEW JUDGE .. .. J. S. SEXTON, CHARLIE O'NEIL

"....bears his blushing honours thick upon him."—Shakespeare

THE EX-TINGUISHED JUDGE .. .. JUDGE PERCY BELL

"Too much honour, O! 'tis a burden
Too heavy for a man that hopes for heaven."—Shakespeare

THE LAWYERS INCOME TAX .. .. JAMES M. BECK

"What is to us if taxes rise or fall
Thanks to our cunning we pay none at all."—Churchill

THE LAWYERS OUTGO TAX .. .. FREDERICK N. JUDSON

"These exactions are most pestilent
To bear them, the back is sacrifice to the load."—Shakespeare

THE MANANA MAN, as viewed by .. .. JACK LAFIANCE
(James J. McLoughlin)

"Dreaming of a tomorrow, which tomorrow
Will be as distant then as 'tis today."—John Bowring

"The rest is silence."—Hamlet

APPENDIX I

ANNUAL ADDRESS

OF THE PRESIDENT OF THE MISSISSIPPI STATE BAR ASSOCIATION

Hon. Robert B. Mayes.

Gentlemen of the State Bar Association:

Before proceeding to discuss those things which the constitution of this Association require the President to discuss in his annual address, it is fit that I should express to the Association my very high appreciation at having been chosen as President for this Tenth Annual Session. When I was chosen to this high position, I did not have this opportunity, and now on account of an indisposition lasting for several weeks, I am again prevented from coming in person to express my gratitude. It is no flattery to the Association to say that there is no position at the bar that carries with it as great honor as that of being voluntarily selected to preside over the annual meeting of the Association. It is the ambition of every lawyer who loves his profession to merit honor at its hands, and if he should be so unfortunate as not to merit honor, it is nevertheless pleasing that his brothers of the profession have found in him some quality worthy of recognition. While there are many positions which members of the bar are called upon to fill carrying great responsibility and honor, yet there is no position at the bar that confers greater distinction than being chosen as the President by the members of the bar themselves, because it comes from the members of the profession, uninfluenced by any personal or political consideration. It is but just to myself to say that I have labored under great difficulty in the preparation of my address for the reason that I have had a very protracted illness at the time I had set apart for the purpose of this work, and am not fully recovered when this address is in course of preparation. I am assured, how-

ever, of the indulgence of this Association in any failure to meet the expectations of the members.

On behalf of the Association, I desire to express our grateful thanks to the members of the bar of the City of Gulfport, and to the citizens, for the cordial welcome that has been given to the two Associations gathered here today. It should be pleasing to this city to know that it is the only place that could be agreed upon for the Mississippi-Louisiana bar meeting; and while we have been made to feel welcome, in turn we have turned our backs upon such places as Vicksburg, Jackson, New Orleans, Shreveport and Baton Rouge for a more delightful and progressive city, namely the City of Gulfport. The Mississippi coast was famous for its beauty and healthfulness, and for the hospitality of its citizens, many years before President Wilson distinguished it with his presence. His coming has brought this delightful spot into nation-wide notice, and in future we may expect this coast to be the winter home of the health-seeking, pleasure-loving people of the colder climates. In beauty and in climate it compares favorably with anything to be found on the California and Florida coasts. If every town along this coast had in it a man of the faith in Mississippi as Captain Jones, the builder of the Gulf & Ship Island Railroad, the founder of one of the most magnificent hotels in the South, a man who has been instrumental in making of this point an important foreign port, a man who saw the possibilities and put his money into the developments of same, we would have this coast flourishing with prosperity and blooming with beauty like a fairy land, and values would be five times what they are at this time. Let us hope for another visit from the President and the incoming into the State of more such men as Captain Jones.

The constitution of this Association requires the President to open each annual meeting by calling the bar's attention to the most noteworthy changes in the statute laws made since last meeting and to such acts of Congress which may be of general interest to the members. While this is made the duty of the President, I am not disposed to take the view that he

must confine himself to a discussion of these subjects to the exclusion of all else, for there are other things to which the attention of the bar should be called, in the interest of the Association, which are of as much interest of the welfare of the Association as changes in the laws. It occurs to me that it should be as much the duty of the President to touch upon Article II of the Constitution, which deals with the objects of the Association, as to discuss the changes in the statutes. This article declares the objects of the Association to be to foster legal science, to maintain the honor and dignity of the profession, to cultivate professional ethics and social intercourse among its members, and to promote improvements in the law and the modes of its administration.

We have been organized for ten years, and it occurs to me that we should begin to see the fruits of these objects. If the Association has been unable to accomplish its objects as declared in its Constitution, then we should begin to study the reason why we have not.

In running back over the annual reports of the Association in an endeavor to see what the Association has accomplished in the ten years of its existence, I find the Association, as such, has done little else than cultivate social relations between its members, and has not obtained many improvements in the law or the mode of its administration. It is with reluctance that this confession is made, but it is with pleasure that when this statement is made it can be accompanied with the further statement that the Association itself, through its committees and its membership, has been steadily at work in an effort to fulfill and carry out its objects, but that in almost every attempt that it has made it has for some reason been unable to get the Legislature to adopt any of its recommendations.

During the past session of the Legislature various committees appointed by this body for the purpose of drafting bills to carry out the recommendations of the Association did as directed and appeared before the committees of the Legisla-

ture—committees composed of lawyers—and yet not a single recommendation of the Association was adopted or became a law. This is singular when we remember that the committee before which the recommendations of this Association are referred is the Judiciary Committee, entirely composed of lawyers, and yet this committee reports unfavorably on measures recommended by the Association looking to an improved standard of legal ethics. The remedy for this is to get every lawyer in this State to become a member of this Association, so that they may learn to know and appreciate what the Association is trying to accomplish. Of course, the laymen will not vote for measures of the Association that are repudiated by members of the bar. The medical profession has no difficulty in obtaining the Legislature to pass laws for its welfare, but this Association fails. While health is always valuable, it can attain its best possibilities of enjoyment when accompanied by freedom and the right to hold and enjoy property. The medical profession keeps a man in condition to enjoy, and the legal profession performs the no less important function of securing to the citizen his right to enjoy.

In an address delivered by one of the distinguished Presidents of this Association it was stated that the opportunity of service to the State by the lawyer is peculiarly great, and particularly in this day; that with the restless suggestions of the turbulent times there is a world-wide trumpet call to every lawyer to be ready to bear his part in the impending struggle which is sweeping over the land; and yet it is sad to state that when this Association sends its members to the Legislature with recommendations, looking to the promotion of the moral and legal education of members of the bar, and raising a higher standard for them to be governed by, and these recommendations are presented to a committee of lawyers, the lawyers themselves refuse to lend their aid to the accomplishment of the purposes of the Association. How can we expect the laymen to come to our rescue? I call the attention of the Association to these things to the end that it examine into the reason why and make an effort to have all lawyers of good repute become members of the Association, and assist in rais-

ing its standard by requiring better legal education, and to obtain laws which will enable the Association to purge its membership of the unworthy. Let the Association join in an effort to teach the members of the bar that reverence for the law is essential not only to the making of a good lawyer, but to the making of good citizenship as well. So great was the reverence that Abraham Lincoln had for the law that he said:

"Let reverence for the law be breathed by every American mother to the babe that prattles on her lap; let it be taught in schools and colleges; let it be preached from the pulpit; proclaimed in legislative halls and enforced in courts of justice. And, in short, let it become the political religion of the nation, and let the old and the young, the rich and the poor, the grave and the gay, of all sexes and tongues and colors and conditions, sacrifice unceasingly upon its altars."

We cannot have good laws enacted until we cultivate high ideals of the profession, and it should commence with the members of the bar themselves.

Since the last meeting of this Association we have had a session of the Legislature which illustrates what was said in the annual address of another distinguished President of the Association, that "the tendency of our people to legislate on every conceivable subject and fly to the government for every imaginable sort of relief is one of the most unfortunate signs of the times." It has been with difficulty that I have obtained the acts for review, but there is little in the legislative work that may be termed constructive legislation. Most of the acts are private or of a local nature, so that it may be said that the accomplishment of the Legislature was unimportant. Since the statement was made by the President of the Association which I have quoted this tendency to legislate on every conceivable subject has increased; it has degenerated into an effort on the part of many seeking legislation to build up for themselves protection and prosperity solely on legislative acts and without merit in themselves. At the session of the Legis-

lature just passed more than two thousand bills were introduced. It was stated by the Speaker of the House of Representatives that more bills were introduced at this session than at any previous session. It needs no argument to convince that such a legislative torrent would have been as destructive as a delta overflow in mid-summer. Bills were introduced on every conceivable subject, and it seemed to be the idea that every change in the law was one for progress. It occurs to me that this is just the reverse of the truth. What the people of this State most need is quiet from political and legislative disturbances, and there is a vast difference between a change in the law and a progressive development.

A writer in Leslie's Weekly stated that a western legislator on his way to the State capital was jostled on a crowded sidewalk and was angry; he proceeded at once to outline a bill regulating sidewalk traffic by compelling the authorities to draw eight parallel lines, extending longitudinally over the walks in all the cities in the State; pedestrians were required to follow these lines. so those moving in one direction would not interfere with those moving in another. The penalty for not following this chalk-line program was to be a fine for every offense or ten days in jail. I do not think a bill such as this was any more far-fetched, or foolish, than were many of the bills introduced at the session of the Legislature just closed. It is undoubtedly true, not only in this State, but throughout the United States, that we are legislation mad. We do not appreciate the importance of sending the right sort of men to the Legislature until a crisis comes; anybody, it seems, is good enough to send to the Legislature; and if we improve we must select our representatives with greater care.

Charles Francis Adams in an address before the University of South Carolina said that "there has been, as all men know, a most perceptible tendency of late years towards what is known as an array of one portion of the community against another; that the whole tendency of our legislation, national and State, during the last twenty years, has been, first, to monopolize all capital, and later to bring into existence a

counter, but no less privileged class, known as the wage earner. As respects legislation the American ideal was the individual and individuality. This implied adherence to the Jeffersonian idea that heretofore the world had been governed too much. The great secret of truth that national prosperity, happiness and success, so we were taught, was to allow each individual the fullest possible play, provided only he did not infringe upon the rights of others. How is it today? America is the most governed and legislated country in the world. With one national law-making machine perpetually at work grinding out edicts, we have some fifty provincial mills engaged in the same interesting and to my mind pernicious work. No one who has given the slightest consideration to the work will dispute the proposition that, taking America as a whole, we now have twenty acts of legislation annually promulgated, and with which we are at our peril supposed to be familiar, where one would more than suffice. Then we wonder that respect for the law shows a sensible decrease. The better occasion for wonder is that it survives at all. We are both legislated and litigated out of all reason. Paternalism has crept into our legislation, and like a huge cancerous growth is eating steadily into the vitals of the political system. On account of this, and instead of supporting a government economically administered by money contributed by the people, a majority of the people are today looking to the government for support, either directly through pension payments, or indirectly through some form of industrial paternalism. Jeffersonian simplicity is preached, extravagance is practiced."

While I have every respect for proper laws giving to each individual equal opportunity, unless the people rise up and put down these paternalistic laws intended to give to some one class of citizens a false and unjust advantage over the others, it is easy to be seen that we are just beginning our troubles. We need not now fear corporate greed; our menace now is individual paternalistic legislation, intended to build up a class at the expense of another class, and most often sought in the name of labor or wage earners.

The people of the State are more to be congratulated upon

the laws which the Legislature did not pass than they are upon the laws which it did pass. If the legislative acts of 1914 are examined it will be found that there are very few laws of a public nature which will bring any substantial benefit to the people as a whole; and in this connection it occurs to me that the defeat of what is known as the "Land Bill" was the greatest triumph of the session of 1914.

In the depressed condition of affairs of the State it needs to encourage capital to come into it in order to develop and build up tax values. No State has better natural resources, or is more susceptible of development, than Mississippi; but the people are not able to bring about this development without help from the outside, for they have not sufficient means. The legislator who makes causeless war on capital and its investment in this State is an enemy to the State's best interest. The State can only hope through outside capital to bring about proper development of its resources, and laws such as the proposed "land bill," if it had passed, were calculated to make it impossible for this State to retrieve itself from the disasters which have fallen upon it in the last few years. If the Legislature of the State had turned its attention to the passage of laws that would promote instead of impede development, it would have earned the gratitude of a suffering public—laws which, instead of making it more difficult, would have brought to our rescue outside capital. It is impossible for any State to succeed or prosper which undertakes to keep from within its borders desirable immigration or capital. While the "land bill" did not pass, it is impossible to estimate the damage which was done by the agitation of such a law. While this is true, there is yet a hopeful side, and in some way this State always retrieves itself, and may be relied upon to send enough thoughtful men to the Legislature to do the conservative thing. While there was much agitation in the Legislature and many measures proposed which would have retarded the development of the State, it is very pleasing to say that few of such measures were passed, thus showing that while the agitators will find their way into the halls of the Legislature, the

State may be relied upon to send a majority of conservative men to shape the policy of its laws.

President Taft said: "It is not alone the popular control of laws and executive action that gives the democracy strength and long life. It is its capacity to do justice to the individuals and the minority. Lack of this is what destroyed ancient democracies. What preserves ours are those self-imposed public restraints and practical means for enforcing them that keeps the course of the majority just to all and each of the people."

I do not believe that the people of this country are demanding such so-called reforms as the judicial recall, the initiative and referendum; but they are the vagaries of the distorted minds of the political demagogue, searching for something with which to discontent and agitate the public mind, in order to get up an issue to ride into office. If a Republican form of government is to fulfill its purpose, it can only do so when it has proper safeguards for the majority. This can only be accomplished by written constitutions which take away the tyranny of the majority and protect the minority in their rights. All these new isms, when followed out to their last analysis, simply mean a destruction of the constitutional government; and when this is done democracies will be destroyed with it.

Since the last meeting of the Association, by virtue of a decision of the Supreme Court all doubt which surrounded the question as to whether or not we had an elective judiciary has been set at rest, the court having held that the amendment to the Constitution providing for an elective judiciary was properly submitted. It is doubtful if the court's decision on this subject is not **obiter**, since the question was not presented for decision by the case they were called upon to decide. In order to reach this conclusion, the court over-ruled a former decision of the court which declared just the reverse, and which had been relied upon by the members of the bar as **stare decisis** of the question; but the court held otherwise. It occurs to me that in following out that part of our Constitution which re-

quires this Association to promote improvements in the law, that the members of the bar should take some decisive action as a bar in the selection of the judges, and in each district should meet and select from one to three men to be voted upon by the voters and recommend them. If they did this, it could not be said that the bar was taking one man for any political purpose, but, if several were nominated, all being selections of the bar, it is certain that we would get a good man, and I believe the voters would follow the suggestions of the bar. The bar ought to take this matter in hand in the beginning; it should set the standard by which the selection of judges is to be controlled. Every lawyer practicing is only interested in having a good judge, and no lawyer can be on but one side of the case; therefore, the only inducement to the members of the bar would be to get the best material for the position.

I may mention here that there were submitted at the last session of the Legislature constitutional amendments to be voted upon looking to the increase of the Supreme Court bench, and to make the members thereof elective. There is no doubt that the membership of the Supreme Court should be increased; but it is my judgment that the proposed amendments should be defeated. It is the purpose of these amendments to permit the court to divide into two sections; but I do not think the Supreme Court should be so divided. If this is done, it starts out with confusion and dissatisfaction. There cannot be such things as two Supreme Courts, having equal power, without dissatisfaction and confusion. It occurs to me that it would be better to wait until we have a constitutional convention and organize the court as it ought to be than to start out with a makeshift. If the court intends to divide, so that one department shall be criminal and the other civil, it is sufficient to say that the criminal department would not have enough work to keep it busy three months in the year. If the addition of three members to the court is intended to merely increase the bench to six, it would not facilitate the work, as actual experience has shown that the greater number on the Court of Last Resort the slower will be the accomplishment of the work. This statement can be verified by examin-

ing the records of the Supreme Court after the two commissioners were added, making practically five members of the court. When that was done there were something over one hundred less cases decided than when the Supreme Court was composed of three members. If the court is to divide itself up into two departments this would prove entirely unsatisfactory, and it is my judgment had best be deferred until we get the proper relief. The membership of the Supreme Court of Mississippi should be increased to five or seven; but there should also be, in addition to this, an appellate court. What the Supreme Court of the State needs is to take work out of it. The proposed amendment will not accomplish the purpose intended and should be voted down.

While speaking of the judiciary, I take this occasion to say, that, in my judgment, there is no more pernicious statute than that which gives to the Attorney General of this State percentage of the amount recovered by him in penalties for suits brought to vindicate the State's authority. The Attorney General's office is too important an office to be commercialized. It is a **quasi** judicial office, and if the Attorney General is not paid enough—and I do not think he is—he should be paid a full salary; but no officer occupying the position which he does should have any interest in any recovery which he might make through the instrumentality of any suit to vindicate the State's authority. I speak impersonally, of course.

While I was a member of the Supreme Court I prepared and introduced an act to repeal the statute. The Attorney General is a salaried officer of the State, and paid to represent it in all matters. To take the salaried officer and put him in the position where he is liable to have his motives impugned every time he undertakes the enforcement of a statute carrying with it a penalty, because he may obtain a commission on any amount recovered, is to impair the usefulness of the office and to bring it into disrepute. Even when district attorneys were allowed fees for convictions of crime the Attorney General was not allowed to do this. The statute is a revival of an obsolete and repudiated State policy, and should be repealed with all speed.

Another important law proposed by the Legislature is the new "Banking Law." Before discussing the statutes generally, I want to make some comment on this law. Whether this law will prove beneficial to the State or not is doubtful. It is certain that much of the bank supervision will be destroyed by making the bank examiners elective. Such offices should be entirely eliminated from the possibility of political entanglements. While the double liability feature for stockholders in banks has crept into both the State and Federal statute, I doubt its advisability as to State Banks. Many people of small means take stock in banks and venture in that way all their surplus. If they are not only to risk this but additionally to assume a liability for that much more, persons of small means are apt to look for other methods of investment, and in this way the banking interests of the State may become seriously crippled. Laws should not be made so stringent as to cripple the circulation.

Under Section 64 a bank is prohibited from holding stock in another bank. This is a good law; but it should have gone further and prohibited any bank, or any director in any bank, from loaning money to any industrial plant in which it or any of its directors hold stock. An examination of the bank failures in this State will show that this has been the cause of many of the failures which we have had. A president of a bank, or the directors of a bank, frequently own stock in other industrial plants, and they loan these plants money and pass upon the securities which their own institution shall offer the bank for the purpose of borrowing, and in many instances money is loaned when it ought not to be, and when it would not be, but for the fact that the officers of the bank were doing so in an effort to help the outside institutions of which they are members.

Several attempts have been made to procure a law that would compel banks of this State to publish a list of inactive accounts so that owners of deposits who have overlooked them, or the relatives of deceased parties leaving deposits in banks uncalled for might get same; but all efforts along this

line have been defeated by some mysterious and unknown means. It is nothing but common honesty that a bank should publish for the lawful claimants of deposits that are laying in the vaults of the bank belonging to unknown parties, and if I were president of a bank this would be my rule without any law; but if the banks will not do this, they should be compelled to do so. If you owe a bank they will send you a statement, but they will allow deposits to remain forever and never call attention of the owners to the fact. This should not be. I am told that a deposit was placed in the bank at Natchez for certain parties by a relative, I think, and though amounting to several thousand dollars it remained there unknown to the parties to whom it belonged for ten or fifteen years, though they lived in that city, and that it was never made public until a list of creditors was published when the bank failed. I knew of another instance of this kind, and doubtless there are hundreds of them. Such money does not belong to the bank. and it is dishonest to keep it. Banks should be made to publish a list of accounts that have not been added to or drawn from within twelve months every year, and in this way thousands of dollars that now go unjustly to enrich the banks would find its way to many needy and just owners. An abortive attempt to meet this suggestion was made by Section 61 of the Banking Law, but it is so drafted as to amount to nothing. An adequate law on this subject ought to be passed and penalties imposed on every bank that violates it to an extent that would force compliance.

Coming back a moment to a general discussion of affairs appertaining to the government of this country, a subject of peculiar interest to the bar, it has been demonstrated that woman's suffrage is a success. When we read of the triumph of the State of Illinois on the moral questions submitted to the electors of that State in the early part of this month, and further note the fact that it was the vote of the women that did it, it seems to me that the question of whether or not woman's suffrage will benefit this country is not now an open question, if. in truth, it ever was. I cannot say that I favor it, because so serious a responsibility should not be placed upon

the women of this country unless it is the wish of a majority of them. I shall be in favor of it when the question is submitted to the women and a majority of them say they want it. I do not believe that a few women should be allowed to force upon a majority this responsibility. The women ,I believe, would rescue us from the political corruption and possibly from the socialism into which this great country is fast unconsciously drifting.

Without knowing it, socialism has taken strong hold upon the legislation of this State. Much of the modern propaganda, such as the recall, the initiative and referendum, is the concept of the socialist. Constitutional government has been the boast of democracy. but unless the people awake at once to the dangers which threaten our government through socialistic propaganda and stamp it out, constitutional government is a thing of a short while. If I were asked who is the leader of this thought in America, I should answer Theodore Roosevelt. I would not detract from his masterful resourcefulness; I admire his great energy and persistence, and the great accomplishments of this distinguished American; but it is my judgment that he has done more to shake the foundations of this government than any other one being that ever lived in it. Great as he is in many things, he is yet the greatest agitator in the world, and the worst menace to constitutional government and the continuance of our American institutions. If charged with being a socialist. I doubt not but that he would resent the charge, but he is the greatest power for socialism there is now on the American continent. Lesser politicians, seeing the effectiveness and taking qualities of his agitations, have seized upon them and undertaken to carry them further than Roosevelt himself. His influence on the government has been a far greater force for evil than for good.

A member of the Ohio Bar in an article to be found in the "Lawyer and Banker" of February. 1914, commenting upon the subtle attractiveness and danger of the new theories, and in urging that these modern so-called progressive notions should be met and argued against, says: "We have too long rested supinely in the belief that there was no danger in these

attacks upon our system of representative government with its division of the government into three branches, the courts into two, and a written constitution, written to guard minorities against the passions of the majority. The wisdom of this is challenged today; and the bulk of our people, brought up in the safety which these safeguards have afforded, removed by lapse of time from dangers which caused their enactment, are ignorant of the reasons of their well-being."

It behooves not only the bar but the people to arouse themselves from their indifferences lest their representative government be destroyed, and the Constitution itself swept away, leaving them to the tyranny of the majority without power resting anywhere to protect them. Paternalism in legislation is another form of socialism. We have evidence of the paternalistic tendency which our legislation is taking every year. To illustrate: There was introduced at the last session of the Legislature an act to amend Section 3074 of the Code. It will be unnecessary to quote in full this act; it is sufficient to say that it is that section which gives a lien to material men, mechanics, and laborers, etc. When a material man sells goods to a contractor all he need do under the law as it now stands to protect himself, and to cause the owner to pay him, is to send notice to the owner at the time of the sale that he will look to him for payment, and this serves as an equitable garnishment. The material men not content with this, undertook to get the Legislature to pass a law which would enable them to sell material to the contractor, not give notice to the owner at the time of the sale, take their chances on the contractor paying, and if he did not do so, then ninety days after the work was completed, and without any previous notice to the owner and after he perhaps had settled with the contractor, come in and give notice to the owner and make the owner pay twice. I am glad to say that this act was defeated; but it illustrates the character of legislation. The material men were willing to impose this injustice on an innocent man rather than to offend the contractor with whom they dealt, and expected to deal, and yet distrusted.

Another law passed during the session was a law which forbids public service corporations from requiring any employe to give bond in any particular company. Another law of a similar character is fixing when corporations shall pay their employees, how often each month, etc. Laws that propose to give one person advantage over another and to create inequalities; laws that are passed to promote any single industry at the expense of another, the laborer at the expense of the capitalist, or the capitalist at the expense of the laborer, are each equally pernicious and in the end bring about their own disasters.

There was adopted at the Legislature of 1912 an amendment to the Constitution submitting the initiative and referendum. This was previously submitted in 1912 and defeated at the polls, but is again brought to attention by a subsequent act. In a government like ours, where there is a new Legislature every four years, there is no need for any such law. There is not any bill that any person or persons desire to have introduced but that some legislator will present it for the consideration of the Legislature. We are having so many elections that the public is now taking no interest in any election, and it is utterly impossible to convert the whole people into a legislative body without confusion, turmoil, and dissatisfaction; and when this method is adopted it is another innovation of the Constitution and another attempt to destroy the Constitution itself. Such policies substitute the mob for orderly government. The people send their representatives to the Legislature and pay them to study their interests, and do not want to be bothered with doing their work themselves.

It is unfortunate for good government that the court saw fit to over-rule the Powell case and decide as it did in the case of Attorney General v. Jones. Under the Powell case Section 273 of the Constitution was a standing sentinel guarding the symmetry and harmony of the Constitution, preventing the Constitution from being nibbled away by improvident amendments which destroy the symmetry of the whole. We all know that while the people are presumed to know the law,

that constitutional amendments are passed by the Legislature and submitted to be voted upon at elections where not one twenty-fifth of the qualified electors vote. Often important principles of government are changed and the people are unaware of it. The people do not keep up with the proceedings of the Legislature and amendments to the Constitution are submitted without a knowledge of a vast majority of the people. It seems to me that the design of Section 273 was to protect the Constitution as a whole; to allow amendments, but to make it difficult, in order that the Constitution might not be swept away.

In my judgment, the act of the Legislature providing for the recall of municipal officials is in conflict with Section —— of the Constitution. Public officers cannot be removed, as was held in the case of ..... vs. ..... except upon indictment and conviction; and the court has held in the case of ..... vs. ..... that the term "public officer" applied to all who performed a public duty.

I heard a distinguished Mississippian on one occasion say that there was not so much actual dishonesty, in the sense in which that term is generally accepted, among public officers as was generally supposed, but that the greatest dishonesty consisted in the unwillingness of candidates for office to express their honest views upon public questions. I agree with this distinguished Mississippian, and it seems to me that this is the greatest evil of the day. Through this kind of cowardice laws are placed upon the statute books, and the public mind is poisoned. The people love honesty, and the would-be public man who will boldly express himself will in the end find this the best policy.

I now take up for consideration the Federal laws. Congress has passed few laws of public interest since the last meeting of the Association, and few that would be termed constructive. The truth is there are only two. Those are the tariff laws, including the income feature, and the Regional

Bank Bill. Because of the fact that our Louisiana friends are here, I refrain from discussing the Regional Bank Bill, as I am desirous that the cordiality of these two Associations be preserved, and I hear that our Louisiana friends do not like to discuss this subject. But while I write there is pending in Congress a measure to repeal the toll exemption clause of the Panama Canal Act. This in my judgment is one of the greatest attempts of a great President to accomplish the right thing. It seems to me that no measure that has been introduced in Congress during his administration is of as much moment as is this one; nor can I see how a member of that body can make up his mind deliberately to vote against it. It seems to me that the position of the President in this matter is right, that it involves the good faith of the nation, and that it should have the unanimous support of the members of Congress. I am aware of the fact that there is much difference of opinion as to this by great and just men, but in looking over the treaty under which this question arises it does not seem to me that there is but one side to it, and I earnestly hope, although this address may be delivered after the action of Congress, that the President will be triumphant in this measure.

Coming now to a consideration of the State laws to which I think the attention of the Association should be directed, they are comparatively few in number.

There was passed an act exempting all money received on any judgment recovered for personal injuries from levy or attachment where the amount did not exceed ten thousand dollars.

There was an act passed abolishing the doctrine of the assumption of risk by employees in all cases where the master was negligent.

A new liquor bill was also passed by the Legislature, the important feature of which prevents the shipment of intoxicating liquors in greater quantities than one gallon to

any one person, or malt liquors not exceeding one keg or cask of beer. In addition to this, it prohibits the keeping of any intoxicating liquors in any locker or any other place in any social club or organization for use therein. I shall not pursue the details of this bill, as I take it that interest has prompted the members of this Association to inquire into its provisions in order to see that they may yet have a few drops of the fiery liquids without making themselves liable to be carried to the lock-up.

There was also passed a law prohibiting boys under twelve and girls under fourteen years of age from working in any cotton or knitting mill, and prohibiting boys under fourteen years and girls under sixteen years of age from working in any cotton or knitting mill more than eight hours in any day, and prohibiting all other employees of cotton or knitting mills from working more than ten hours in any day.

There was also passed an act providing for the election of circuit and chancery judges. This act requires these elections to take place concurrently with the elections for representatives in Congress, and every four years thereafter.

The Railroad Commission is given concurrent jurisdiction with the municipal authorities in cities and towns to supervise street railroads.

Another law was an act to create the office of Factory Inspector of all factories employing women and children.

Section 2146 of the Code of 1906 was changed in reference to homestead exemptions so as to allow this exemption to persons over sixty years of age who had been deprived of this exemption by reason of having no family, and who are not occupying the homestead.

The Income Tax Law was strengthened to some extent by the Laws of 1914.

A law was passed giving to electors of municipalities the right of the initiative, referendum and recall.

APPENDIX II

(JOINT CONVENTION)

ADDRESS OF WELCOME

By B. E. Eaton, Esq., of the Gulfport Bar.

Mr. President and Gentlemen of the Joint Associations:

The bar and citizenship of the coast do not lightly esteem the privilege of entertaining this distinguished assemblage. When, as upon an occasion like this it should be, the lawyer, not environed by considerations of personal interest, lends his talents to the solution of purely professional, ethical, and necessary legal problems, his presence means much to the mental and moral well-being of any community.

Yet while we so regard your coming, we feel that ours is the ideal location for the joint meeting of our Associations. Precedent, the authority which the lawyer can ill afford to disregard, fortunately speaks in our favor.

Scarcely more than a year ago the chief executives of our respective commonwealths, with many distinguished attendants, became our guests and confirmed our hope that here, at least, the citizens of our two States could meet in delightful harmony and with mutual good will and esteem. We now cherish the second hope that our present gathering will so reaffirm and establish this fact that each recurring year will witness a similar gathering of these two Associations.

From a professional standpoint, our meeting is, however, the more significant, in that it represents the two dominant legal systems of the world. But we need not quarrel as to which is the more perfect, nor need we attempt to apportion either to England or France the greater honor for the development of its peculiar jurisprudence.

Eminent authority accords this honor to neither one. We

are told that but two races in the history of the world have shown a genius for law—the Roman and the Norman. Our consolation, however, is, that the systems of jurisprudence originated by these two races, as modified and enlarged by the French and English, now occupy the whole of the civilized world. But "our Common Law is peculiarly the work of the Norman element of the English people. There is no English law, no English lawyer before the Norman Conquest." Until then England was devoid of coherent legal principles, or uniformity of procedure. "The Norman Conquest was accordingly more than a change of dynasty. It produced a revolution in jurisprudence." It was consequently, the genius of the Norman lawyer which in the course of two centuries after the Conquest, developed, from one precedent to another, our Common Law System and rendered it capable of its indefinite expansion.

The legions of Caesar, in establishing the government of Rome in Gaul, also established those legal principles which, by adjusting themselves to the changing conditions of intervening centuries, ultimately became the foundation of the great legal structure reared by Napoleon.

However, at the present day we may rejoice that, whether as a votary of the one or the other system, the patriot lawyer, either as a judge or legislator, has been the developing agency of the law and has applied to each generation its protecting principles. To his credit it may be said that, from the time he wrested Magna Charter from an unwilling monarch until he fashioned in our own Constitution the enduring principles of representative government, the lawyer has been the proponent of human liberty, the defender of individual rights.

Consequently in carrying forward such work, the lawyers of Louisiana and the lawyers of Mississippi may as brothers co-labor in the same field.

But more, even yet, than professional kinship, than social courtesy, or gentlemanly instinct cements the fraternal union in this joint Association. It is the actual kinship of history

and blood; the cohesion of those ties which spring from common undertakings, common perils, common reverses, common successes.

Louisiana and Mississippi have always dwelt together under the same flag; together they have marched through the portals of government of many nations and together they have come from the Indian-haunted forests to this present day. From such association, commercial interchange, most naturally developed, a commerce arose keeping step with the growth of cities, industries and population, but a commerce all the while responding to the operation of economic laws.

We of Mississippi have aided much in the building of the South's greatest city and New Orleans, now a city of new ideas and with a sense of new power, even though without a regional bank, has aided much in the natural development of Mississippi.

Each has profited in its dependence upon the other. Either without the other would be less great.

With a sense, therefore, of our professional, historic and commercial unity, on behalf of our town and coast, I greet you, Mr. President, and gentlemen of the Joint Association, and welcome you to the performance of your important tasks.

ADDRESS OF ARMAND ROMAIN, ESQ.

Mr. President, dear Brothers in Law and Sisters, and, without the slightest intent to discriminate, Ladies and Gentlemen:

In a moment of reckless abandon, as our Parisian friends might say, and carried away by the enthusiastic impulse of serving our Association, as well as our beloved president, I accepted a few days ago, the honor of responding to the welcome from the great State of Mississippi, little realizing at the time the seriousness of the responsibility I had assumed, and the difficulty of the task.

The last few hours spent in your midst have impressed me more than ever before with the great practical and economic value of the fundamental distinction between corporate and individual responsibility and capacity; in this sense, that the one who responds undoubtedly is, in a measure, or holds himself out to be, the sponsor for, or responsible for, the object of the welcome.

And while I have absolutely no hesitancy, but on the contrary, am proud of having the honor, of being the sponsor for the Louisiana Bar Association, in its corporate capacity, I must admit some little diffidence, and am disposed to question the advisability of my holding myself out as responsible for all acts performed, or that may hereafter be performed, in an individual capacity.

I came without any set speech intending upon yesterday to pick up some of the gems of thought that were expected to drop from the lips of our members, in our deliberations scheduled for yesterday morning. But, at some appointed and, certainly, disappointing time for me, a suspicious motion, which may probably, and should certainly, receive proper investigation when we return home, was made to adjourn. So that when we remodeled the program of the day I was robbed of the opportunity of storing myself for today's address, for the Louisiana Bar session was hastily adjourned at very nearly

twelve o'clock, because we understood that the Mississippi session had adjourned at 11:30, to meet in room 13.

In thinking over the duties of the man who responds for an Association, one is confronted with, as I suggested, a rather difficult duty, because no one is expected to be taken seriously in a matter of this kind. The sponsor carries no message, he discusses no topic, he is given no serious subject to present. In other words, he plays, in my judgment, a part somewhat akin to that of the chorus in the old Greek drama, and in these piping days of peace and of conservation of natural resources, the office is still preserved for the purpose of enabling the dramatis personae who are to follow, to catch their second, or third, or fourth wind, as the occasion may be. In other words, this function is only a preclude to the piece de resistance. Therefore, judge it lightly.

But, at this juncture, I wish to assure you that you will not be unduly detained, because, when I happened to submit the few thoughts then in my mind, to the gentlemen with whom I have had the good fortune of being associated during the last twenty-four hours—my room mates—I was threatened with dire disaster if I should indulge in any prolonged address. So, my instinct of self-preservation will protect you on this occasion.

Besides, a few days ago, when the president of the Louisiana Bar Association asked me to perform this service, I asked him what to talk about, and he very blandly and frankly told me to talk about two minutes.

In looking over the program of the day, my first impression is that of shock and of surprise, for instance, the "Legal Partition of Louisiana and Mississippi," whereas we came all the way from Louisiana, in a special train, mind you, under the impression that this was the legal union of Louisiana and Mississippi, and not its partition.

On the other hand, time will not permit me to explain to

you the loss of that hundred, or even of that thousand; much less will it enable me to refer to "The case of the lost million."

However, I may say, en passant, that, judging from the large attendance at this meeting, I have somewhat of a notion that many of those present believe that that million was probably lost in Gulfport.

And, finally, gentlemen, the propriety of the occasion will not permit me to tell you all I think of "The Judiciary."

However, if you will pardon this levity, I will bring myself to bear more closely upon the very pleasant duty which is assigned me—a duty which partakes more of the nature of a pleasure, in the presence of this remarkably distinguished and intensely interesting audience, I shall endeavor, in only one or two words, to do what. to me, is superfluous—to attempt to respond to the hearty and generous welcome which has been extended to us by the gentleman from Mississippi.

On occasions of this kind there seems to be a sympathetic strike between my powers of ratiocination, and my powers of expression, and I find that "Thought rushes out to wed with thought, ere thought can wed itself to speech."

And I am reminded of the little Mississippi River steamboat, made famous by Mr. Clemens, that had a whistle so large, and an engine so small, that every time it blew for a landing, the paddle wheel stopped. And in that homely illustration I have I think, found,—it has just dawned upon me—that that was probably the excuse or explanation of my presence here at this moment—simply to officially announce to the Mississippi delegation that we have officially arrived. And so my engines are expected to stop.

But I cannot do so, without referring once more to the great pleasure, which I know every member of our delegation personally feels, in being present here today. We come, with our lawyers and our judges, men of peace and pieces of men,

veterans, Confederate and otherwise, impossible to tell the one from the other, as everyone today wears a union suit. But we come to thank you for the welcome extended in a reunion which is unusual, and, I trust will be memorable in the annals of the Associations of our two States.

We have brought with us some of the best we breed. The bad ones were purposely kept back. So that the Louisiana delegation is entirely and strictly a hand-picked delegation. It is particularly gratifying to me to take part in a program in this beautiful spot, which means the commingling of the Red and the Blue, as well as the Blue and the Gray, and to be privileged to address a gathering made up almost entirely of the highest product of our civilization——the American lawyer.

Mr. President, and Gentlemen of Mississippi, apart from the great pleasure it is, individually and in solido, to be with you— to mix with the men of light and leading, in the great State of Mississippi, we deem ourselves fortunate, indeed, to have been able to make this little journey from the home of Roselius and Benjamin and Mazureau and Grymes, to the home of Prentiss and Lamar and Walthall; and I trust, for the third and last time, that you will enjoy half as much as we do, our peaceful invasion. I thank you.

THE LEGAL PARTITION OF LOUISIANA AND MISSISSIPPI

A Paper Read Before the Joint Meeting of the Louisiana and Mississippi Bar Associations at Gulfport, Mississippi, on May 1, 1914, by William Kernan Dart, of the New Orleans Bar.

We are assembled today not far from the spot where, two hundred and twenty-five years ago, the French settled the province of Louisiana. Mississippi and Louisiana were then an undivided whole. That portion of modern Mississippi which was not actually under the dominion of the French was claimed by them under a title which, while not letter perfect in every respect, was sufficient to give such a pretense of ownership as to furnish the basis of a litigious claim. And this claim was not to be definitely settled until nearly one hundred years later by a compromise between the contending claimants. It would be impossible within the brief scope of this paper to determine to what part of Mississippi, as we know it today. France had a just and equitable title, or to what part England had a fighting title, or to what part Spain had a suggestion of title; yet this much is certain, that all of that country which was later designated by the ambitious Georgians as Bourbon county was in the latter part of the seventeenth century a mere wilderness, populated only by savages. Such sporadic settlements as were afterwards made were hardly more than trading posts; indeed, the census taken of the Natchez country by Spain in 1785 showed just 1550 people.

The controversy as to the ancestry of the State of Mississippi will probably be eternal. One can indeed say with certain assurance of safety from contradiction that the coast of Mississippi was originally settled by the French; that the French were the heralds of civilization in the country which we now call the State of Mississippi. Later came the Spanish, and in due course, the aggressive American frontiersman crossed from Georgia and from the northwest territory into Mississippi, claiming it as his own, according to the true American habit.

From these elemental alloys the sister States of Mississippi and Louisiana have been formed. Today near their common birthplace these legal progeny meet in a joint celebration.

Yet at one time both the Louisianian and the Mississippian were governed by one common system, by one common judge, and by one common law, which came neither from England nor from America, but from Paris, France, and later from Spain. Today Louisiana is being gradually weaned from certain doctrines of the Code Napoleon—and every lover of the marvelous analytical system that honors Napoleon with its name, and which contains a remedy for every conceivable civil wrong must make that statement with a trembling breath for fear of a further alienation of his affections; today Mississippi is so far away from the civil law that to suggest to you that you were once governed by its principles is almost to invite a vigorous denial.

But in that common time of one system of law for the sister States, whose bar associations meet here today, the then inhabitants of both States revered and admired the civil law, and the descendants of those inhabitants may be interested to know to what juridical king their ancient Bezonian bowed.

The earliest inhabitants of the province of Louisiana was orderly, and the French instinct for doing things properly has forever prevailed there. Even before a white man settled the colony there was a charter of government for Louisiana. When LaSalle took possession of Louisiana in 1682, he evidenced this sense of orderliness by doing so by a notarial act. But it was a forest primeval that he claimed, and it was not until seven years later, in 1689, that the real government of Louisiana began. Iberville in that year colonized Biloxi and made it the first capital of Louisiana. Picture to yourself trading expeditions and the establishment of numerous petty forts commanded by officers and occupied by small companies of the army, and you have the first government of Louisiana. Then, as settlements began to take shape, the colony became an appendage of New France, and was ruled from Montreal. Sep-

arated from it by innumerable forests and streams, the edicts and laws of the Governor-General of New France were extended by the king so as to govern Louisiana. The spirit of intolerance which characterized King Louis dominated him in dealing with his latest colonial acquisitions, for when the Protestants petitioned the king for permission to settle the colony under the royal flag, but with freedom of religious opinion, they were answered by Pontchartrain, the prime minister, that "the king has not driven Protestants from France to make a republic of them in 'America.'"

From this time Louisiana is barren of constitutional history until the year 1711. This history of the colony tells us only of minor Indian warfares, endless negotiations with the savages for free trade and navigation, and the establishment of petty towns. In the latter year the throne determined to separate Louisiana and New France, and to erect a local government for the former. Accordingly, Bienville was named governor-general, with Mobille as the seat of government. Scarcely a year elapsed, however, when the government underwent another important change by a grant of huge dimensions, on September 26, 1712, to Anthony Crozat, a wealthy French merchant.

Government was a secondary object in the Crozat charter, the primary one being the promotion of commerce. For fifteen years Crozat was given an exclusive monopoly of trade, infringement of his privilege being punished with a confiscation of goods.

He was given the exclusive right of exporting goods and of importing certain commodities. Such mines as he opened and worked were his property, with a proportion of the products thereof reserved to the king. Annually he was to send two boys and two girls to the colony, and was to be the sole importer of Guinea negroes. After the charter had been in force a year, Crozat was to maintain the king's officers and garrison and in return had the approval of all vacant commissions.

In this document the first mention of the laws under which the colony was to be governed was made when "the laws, edicts and ordinances of the realm, and the customs of Paris are extended to Louisiana." The general system of laws made applicable by the crown to all French colonies of that period was the Customs of Paris, an early French code. France had not then a general jurisprudence for the entire nation, but each province had its separate laws and customs. Ancient local usages, traced back to the time of the Gauls, gradually became settled precedents in France and were accepted as authoritative laws. Each era contributed its quota to make the general customs diverse and various. The numerous tribes which settled the various provinces of France gave to each section of the nation a different law, so that while all the laws bore a general resemblance to one another, the jurisprudence of each province was as different in detail as is the jurisprudence of the common and the civil law. As the dukes became proprietary lords of the several provinces they added their family rules to the tribal laws, which had become the customary laws of the provinces. These took settled root, becoming part and parcel of the customs, traces of which may still be found by the historical student of French law. "The origin of the Custom of Paris, like that of the Seine, in its source," says Laferriere (Du Droit **Francais, Vol. III., p. 297**), "is obscure and lacking; but, in its course, it received the tribute of diverse nations, and, in its development throughout the ages, it became the perfected custom which most accurately reflected French jurisprudence in the sixteenth century." It remained as unwritten local usages and customs until it was codified in 1510.

Many of the provisions which were introduced into the provinces remain intact today in the Civil Code of Louisiana. Under this Code of the Custom of Paris parents inherited from their children. A partnership or a community of acquisitions and additions existed during the marriage, with the husband as master. The wife was powerless to act in anything without her husband's consent, unless separated from him in property. Whatever rights and obligations were acquired by the spouses descended to the heirs in both the direct and the col-

lateral line. Upon the husband's death the wife could refuse the estate if, upon taking an inventory, the liabilities were found to outweigh the assets. The husband could in no way alienate the wife' dowry, and, at her decease, it was transmitted to the children. The usufruct of either the husband or the wife's share survived to the living spouse at either's death. For certain extreme causes children could be disinherited, but as a rule the parent could not alienate by last will more than one-fifth of the estate to the detriment of the children. Following the Salic law the male heir in the direct line succeeded in preference to the female heir, but in the collateral line all heirs took equally. Immediately upon the ancestor's death the heirs were legally held to be in possession of the estate, "**Le mort saisit le vif.**" It may be stated parenthetically that modern Louisiana derives her community system of marriage exclusively from the Custom of Paris, the ancient Roman law containing no such provisions as to a partnership of effects. Thus was Louisiana at once given a law regulating the family relations and the succession of property.

The other reference in the royal decree is that which extended the laws and ordinances of the realm to Louisiana. These were those proclaimed by the king and his council from time to time and upon such special occasions as they were deemed necessary.

Beyond the fact that the Crozat charter gave a decided, though premature, growth to the commerce of the colony, its effects upon the future government cannot be over-estimated. It gave a settled shape to an incongruous form of government and pointed to a supreme authority to be invoked in the settlement of private disputes. Furthermore, it laid the foundation of what was to be the final law of Louisiana and gave a rounding shape to law and order in the colony. A quick succession of steps forward in local government followed the charter, the first being the organization of the Superior Council, on December 15, 1712.

It is well to pause a moment to discuss the Superior Coun-

cil, for it later became almost the supreme power in the colony, arrogating unto itself powers it had not, and presuming upon the easy-going governor and upon the far distant government at Paris. The decree establishing it was a momentous event for the colony. The edict of 1712 gave it a year's life. but in 1713 it was reconstructed and given an indefinite life. The first edict concerning it (1712) named as its corps the governor-general and the commissary-ordonatiare—the last named officer combining a multiude of qualities, mainly those of auditor and treasurer. In the new edict of 1713 it was composed of the governor-general of New France, the governor of Louisiana, a senior councillor, the king's lieutenant, two puisne councillors, an attorney-general and a clerk. Its powers were similar to the executive departments of other French colonies. It was the sole civil and criminal tribunal of original and last resort; its sessions were held monthly, with three members as a quorum in civil cases and five in criminal. In cases of unavoidable and temporary absence, nobles were called to fill the vacant seats. The entendant of New France was the presiding officer, but as he was domiciled in New France the senior councillor sat in his place, taking precedence even before the governor of Louisiana. In provisional matters, and in successions, as the affixing of seals, the probating of wills and other routine work of modern courts of law, this official was the sole judge of the first instance.

It can readily be perceived what a potent influence for evil the council could have become in the hands of a few unscrupulous men, for it was practically omnipotent in the colony. and a use of its latent strength in an unlawful manner could have created great turmoil. That such a result did not occur reflects credit and glory upon the various men who sat at its council board during the fifty odd years of its existence. As it was, it became an accurate mirror of the public sentiment of the community and a friend of the people. Increasing in strength and influence, it stood forth at the Spanish cession as the attempted savior of a people, and as the unpurchasable champion of the constitutional rights of a people educated to freedom of habits and thought. As such, it met its fate under O'Reilley, who

yielded nothing to the old order, not even this stronghold of its freedom.

Five years of experience convinced Crozat of the hopelessness of realizing aught from his investment. Incessant local warfare and Spanish restrictions upon trade and commerce with Lousiana combined to make Crozat's administration a failure. Yet, though devoid of temporary results, and though devoid of increment to the parent government, the Crozat charter blazed the path for greater and more momentous things. Though the population of the colony had increased only seven hundred under Crozat, the failure was attributed to bad management and incompetent officials. On August 23, 1717, Crozat's charter was returned to the king, who found another Don Quixote to charge the Louisiana windmill with the same tactics. On September 16, 1717, the charter of the Western Company, known in romance and story as the Mississippi Bubble, was filed in the Parliament of Paris.

Here flits across the stage of Louisiana for a brief moment one of the remarkable characters of history. John Law, who evolved the idea of collecting all the gold and silver money of France into one bank, was of Scotch descent, and was the ancestor of the modern method of doubtful financeering: Law issued two hundred thouand shares of stock in the Western Company, in which his was the guiding hand, valued at five hundred livres each, and payable in certificates of public debt. Law's bank promptly paid the interest on the certificates and he assiduously circulated tales of a land literally rolling in wealth, so that men of every type in France fought with one another to buy his shares of stock. The inflated stories and the inflated credit both subsided, and with it came panic and rage. Law fled the country and the bubble burst in 1723. The Western Company, however, retained control over the province until April 10, 1732, when the company followed Crozat's example, and retired from Louisiana.

The grant to the company necessitated a reorganization of the superior council, and by an edict of September 20, 1717,

the council was constituted in the same manner as it had been previously, with the omission of the governor-general of New France and of the ordanteur-general, and with the addition of such directors of the company as might be in the province, another councillor and the king's two lieutenants. The increase of business and population necessitated the creation of inferior tribunals, with the council as a court of last resort. The directors of the company, or its agents, and two of the most notable inhabitants in civil cases, with four in criminal cases, were named the inferior courts in the distant parts of the province. In 1723 Louisiana was divided into nine districts, each under a commandant, who was the chief military and civil officer. There were the districts of the Alabama, Mobile, Biloxi, New Orleans, Natchez, Yazoo, the Illinois and Wabash, Arkansas and Natchitoches. All judgments were given without cost to either party litigant. Two years later, in order to provide for the speedy determination of petty cases involving one hundred livres (twenty-two dollars), special sessions of the court were held once or twice a week, which were presided over by two members designated by the council.

From the establishment of the company to the year 1728 various edicts were promulgated by the king regulating the life of the inhabitants. The governor, lieutenant-governor and the entendants in the colony were forbidden to purchase and possess plantations, and could only own vegetable gardens. Vagabonds, forgers and criminals were prohibited from being imported to Louisiana. Resident officers in the colony, save those of merchant vessels, were not allowed to carry swords. Gaming for stakes, the protection of the mail, the prohibition of slave-captains from purchasing or selling negroes before a health inspection was made, the punishment of deserters, and the proper care of hospitals were all provided for in the royal edicts. Ships under sixty tons leaving France were ordered to carry four able-bodied redemptioners for colonization, who should be male, between the ages of seventeen and forty, and of a height not under four feet; vessels above sixty tons were to import six such redemptioners. The period of service of these redemptioners was to be three years.

He who voluntarily maimed or killed another's horse or cattle was punished by death, and one who voluntarily killed his own cattle or horses without a permit from the authorities was punishable with a fine of three hundred livres.

Not since the laws, edicts and ordinances of the realm and the Custom of Paris were extended to Louisiana had another formal code of laws been promulgated for the colony's benefit. The great negro population and a continuous importation of this race impelled the crown to extend the Black Code, compiled originally for St. Domingo, to the Province of Louisiana. It was promulgated in March, 1724, at Fazende, Bruse. Perry, France, and is mainly interesting to us as a historical curiosity. It existed in Louisiana with modifications and enlargements to the secession of Louisiana and the abolition of slavery by the Civil War. It is interesting to note that this Code, **as well as all the other legal incidents of slavery,** emanated from France, and that every encouragement was given to the slave trade by the home government. The people of Louisiana thus accepted with a willing heart a Greek gift, which began a problem that only future generations will finally settle.

The code was divided into fifty-four articles, which, strange to relate, began with an article that decreed the expulsion of all Jews from the colony, an intolerant prohibition which had no place in a slave code. The slave was to be taught the Roman Catholic faith, those being educated to other faiths being subject to confiscation. Sundays and holidays were to be strictly observed by the slaves under a like penalty of confiscation. Free blacks or slaves could not marry whites, the issue of such marriages or of such cohabiting being confiscated, and the slaves being declared forever incapable of receiving their freedom; all officials of the church were positively forbidden from celebrating any such marriages. The children of a slave followed the mother's condition; if she was free, and her husband a slave, the children became free. The master could not compel the slave to marry, though his consent was necessary before the marriage could be celebrated. Christian slaves were permitted burial in consecrated ground. Slaves

could only carry weapons when hunting with the master's permission. Slave assemblages were forbidden under the penalty of corporal punishment and branding; the master who allowed such gatherings was liable in damages. Slaves could not sell goods without the master's consent, and those who purchased from them were punishable by a fine of three hundred dollars. They were to be properly clothed and fed, and such who were not, had only to inform the attorney-general, who would thereupon prosecute the masters. The master had to properly care for infirm and aged slaves.

Slaves could not hold property or make contracts—the profits of their labor went to the master. They could not hold public office, nor act as an agent. They could only testify in a case of extreme necessity or in default of white testimony, and in no case could they appear for or against their master. Nor could they be parties litigant to a suit, being represented by their masters.

The master was liable for the slave's misdemeanor permitted by him. For crime they could be tried without the master's intervention. They were punished by capital punishment if they struck their master or his family, if they committed outrages upon free persons, in some cases of important thefts, and for the third attempt to run away from their masters. For small thefts, the slaves were punished by public whippings. If a slave was a runaway and remained such for one month, he was to have his ears cut off and was to be branded in the shoulder; for the second offense as a runaway, he was to be hamstrung and branded on the other shoulder. Free blacks who sheltered runaway slaves were liable to a fine of five dollars a day; all other free persons who sheltered them were liable to a fine of two dollars a day. The free negro who could not pay the fine was reduced to slavery. Masters could not subject the slaves to the punishment of the rack or kill them, and were punishable criminally for such actions, though the colonial officers could pardon them. Slaves were considered as movables, and were not subject to mortgages.

The husband and wife belonging to the same master could not be seized and sold separately. Children under fourteen could not be sold apart from their parents at such sales. Slaves from the ages of fourteen to sixty and working on plantations, could not be seized and sold separately from the plantation save for the balance of the unpaid purchase price. These provisions did not, however, have any effect in the matter of voluntary sales.

A master above the age of twenty-five years could free his slaves either by a notarial act or by a last will; but the consent of the superior council was necessary for all manumissions. Slaves who were appointed tutors of their master's children were regarded as free. The free slave thus became a citizen, but was incapable of receiving donations. Finally, the manumitted slaves were to be exempt from duties, services. or taxes; they were to possess all the other privileges of free persons and they should show due respect to their former masters.

Such were the main provisions of the famous Black Code of Louisiana.

In 1726 the copper currency was named legal tender instead of the Spanish currency, and anyone who refused it was deemed guilty of extortion, such a person being punished by a fine and by a public whipping. The reason of this enactment was because the bankrupt condition of the French treasury called for stringent measures.

The great distances which separated the various parts of the province caused many informalities to occur in the inventories and formal documents of the colony. Such informalities were cured by an edict of 1748 where there was no fraud or knavery present, provided that all such deeds, etc., were recorded within one year with the superior council. By this decree many land titles and inventories of successions were perfected, and the clouds thus cast upon such acts thereby removed.

In 1743 Bienville retired from the governorship of Louisiana, and was succeeded by the Marquis de Vaudreuil, a French Canadian. Seven years after his advent he issued a set of police regulations which threw light upon the private life of the people, and give us an insight into the French manner of governing Louisiana. These rules were divided into thirty articles and treated mostly of local concern. A prohibitory clause forbade and general distribution of liquors, and provided for the establishment of six taverns in the City of New Orleans for the supply to wayfarers, the sick and infirm in moderate quantities; it was absolutely forbidden to furnish it to negroes or Indians under severe penalities. The taverns were always to close at nine P. M. promptly; they were to be closed on Sundays and during divine worship on holidays. A forty dollar license was imposed, half going to the church and half to be used for the benefit of the poor of the town. The liquor shops were allowed for the exclusive use of the soldiery; pot-houses for the blacks were prohibited as a menace to the community.

The negro, who had already been embalmed in a code, was once more the subject of police regulation. Negroes who kept evil houses became slaves of the king; Frenchmen who should harbor these were publicly whipped and transported to the galleys. Persons who purchased from slaves selling without the master's assent were sent to the pillorieys for the first offense and to the galleys for the second. The master was to treat a slave as a father would his family. but not too leniently. All slave assemblages were prohibited, and the master who allowed slave assemblies on his plantation was punished by a fine of one hundred crowns. Armed negroes were to be chastised by the whites when met, and the negro was punished by the authorities if he resisted. The negro who over-used horses was allowed to be shot on sight. Whenever the slave was abroad, and away from his master, he must show his passport upon demand. All nocturnal excesses of negroes were prohibited. The slave who was wanting in respect to the white was branded on the shoulder and was punished with fifty lashes. The slaves who attended church were to attend the first mass in the morning, and were to be led to and from the church by

their overseers. The master should not ill-treat his slaves, but this provision was only to be enforced when demanded by necessity. These stern regulations of De Vaudreuil evidence the fact that the slave was becoming an important and troublesome figure in the colony, and needed a strong and careful guard and iron-bound restrictions.

The seven years war between England, France and Spain, which during this period had been in progress, was terminated by the treaty of Paris, February 16, 1760. On November 3, 1759, by a secret treaty, France gave Louisiana to Spain. The news was unwelcome to the colonists, and amid great demonstrations they proceeded to protest in a most emphatic manner, and endeavored to have the treaty withdrawn. Throughout the period of this war the colony had pursued uninterruptedly the even tenor of its way, and they followed their protests by the forcible expulsion of a weak, vacillating Spanish governor. In his place Spain sent to Louisiana Don Alessandro O'Reilley, a governor with an iron hand, who summarily executed those who had participated in the events just described, and with equal firmness began to lay the foundation of the future laws of Louisiana. The superior council which had led the insurrection against the Spanish was at once abolished by O'Reilley, and he substituted for it a new tribunal, of which he was the head.

This new body, which was presided over by the governor, had in addition ten other officers. It was called the Cabildo. The three ordinary alcaldes, who were next in rank to the governor, were civil and criminal judges who heard all sorts of cases, from the minimum to the maximum jurisdiction, save when the offender was entitled to a military or ecclesiastical trial. In cases involving more than $330.80, an appeal lay direct to the governor. The provincial alcalde was vested of jurisdiction outside of New Orleans. The alguazil major was a sort of sheriff, who executed all judicial processes. The depositary general was the treasurer. The receiver of fines was sufficiently described by his title. It was the duty of the attorney general syndic to propose measures on behalf of the

people before the Cabildo and to uphold them when attacked. The clerk was an office which was bought and sold by its occupant. The alfarez real was an honorary officer who bore the royal standard on ceremonial occasions.

O'Reilley likewise promulgated in New Orleans a pleading and practice act. compiled by Urrustia and Rey, members of his staff, founded upon the Spanish Codes called the Laws of the Nueva Recopilacion de Castilla and the Recopilacion de les Indias. This practice act could be readily made the subject of a separate address, for it contains the germs of what today is the Louisiana Code of Practice.

From and after O'Reilley's time all appeals from a decision of the Cabildo went to the governor, from him to the captain general of Cuba, from the latter to the royal audience of that island, and finally in some cases to the Council of the Indies at Madrid.

O'Reilley also, by a proclamation, abolished the French laws in Louisiana and substituted therefor the laws of the Indies and the Partidas, and in 1769 these laws were made a part of the governmental system of Louisiana. The Spanish laws were contained in various codes, the **Las Siete Partidas** being the more comprehensive of these digests. After Louisiana became a State the Partidas was compiled under legislative authority by Messrs. Lislet and Carleton, and that compilation has been accepted as all of the laws of Spain at any time in force in Louisiana.

The **Partidas** contained both axioms of law and rules of practice, compiled in seven parts. Similar to all continental codes it was created on a great philosophical plan. The first part opened with a definition and a quaint explanation of the division of laws, the force of laws, the object of laws, and the power to expound laws, and it then passed to the rules of usage and custom. It concluded with a division devoted to religious rules, how they should be observed, and of the powers of "the kings and other great lords of the empire." The

latter titles of this part treated of international law, the spoils and the honors of war, and of the laws of military captives.

The third **Partidas** begins with a dissertation on justice and then passes into an analysis of the rules of pleading and of practice, together with rules defining the powers and the duties of judges. Indeed, the greater portion of this section of the Partidas contains an exhaustive code of practice in itself. Passing from practice it next elaborates on the Dominion of Things, of Prescription, of Possession, of Services, of Usufruct, of New Works.

Betrothal and Marriage is the subject of the Fourth **Partidas**. This broad title includes within it the manner of engagement, the manner of espousal, the impediments to marriage, the right to and the cause for divorce, the dowry and donation by spouse to spouse or by outsider to spouse by reason of the marriage, of legitimate and of illegitimate children, of the status of the concubine (who was in a way semi-legalized). It then passes to the paternal power, to slaves, to the doctrine of liberty, and to the state of man.

The Fifth **Partidas** treats of "Loans, Sales, Purchases and Exchange, and of all other Contracts and Agreements of whatever nature they may be, which men enter into with one another. In addition to the subjects thus enumerated this **Partidas** laid down the law of Deposit, of Donations, of Letting and Leasing, of Ships and Shipwreck, of Partnership, of Promises and Obligations, of Suretyship, of Pledges, of Payments, and of Insolvent Debtors.

Wills and Inheritances was the title of the Sixth **Partidas**. In this section the whole question of succession, of tutorship, of various sorts of wills, was explained.

The Seventh and last **Partidas** was a Code of Criminal Law, defining crimes and their punishment. It concluded with a set of general legal maxims and definitions.

The **Partidas** contained practically all of the rules for the government of Spanish Louisiana, though these were supplemented by occasional gubernatorial proclamations.

It has been a matter of debate as to whether the Spanish laws were ever in uninterrupted vigor in what is now the State of Mississippi, for by the seventh article of the treaty of peace between England, Spain and France of 1762, the latter nation ceded to Great Britain all that portion of Louisiana lying east of the Mississippi River. In the following year a British governor established himself as governor of West Florida at Pensacola, with a dominion apparently extending over all of the ceded territory. There is a decision of the supreme court of Mississippi, however, which holds that the Spanish law of inheritance applied to Mississippi as late as 1787, and this view was sustaned by the United States supreme court.

The treaty of 1762 went into effect, and until about 1780 the British governed the sparsely settled territory of Mississippi with a military captain. In that year Spain declared war upon England, and Governor-General Galvez carried the war into West Florida. After a brief and a stirring campaign he recovered that country, and in 1781 brought it under the Spanish flag and under the Spanish laws. Under Galvez and Miro, his successor, there was a large influx of Scotch-Irish and American immigration.

In the meantime, Georgia, basing her claim on the English annexation, created out of what is now the Mississipi country in 1785 the county of Bourbon, and attempted to govern it through deputies, giving land grants and exercising like governmental functions. The right to so do was insisted upon by Georgia, and the various contentions remained unsettled until the treaty of Madrid in 1795. For many decades thereafter the conflict between the Spanish and the Georgia land grants was the subject of fruitful litigation in the Mississippi law courts.

During all of this period of conflicting claims the Spanish

physically governed the Mississippi territory. The population was, however, largely American and favorable to the claims of Georgia to this country. Demonstrations were made against the Spanish, and American troops under the command of General James Wilkinson which were quartered in the territory. Georgians, Americans and Spaniards were all at arms' length over the matter until finally Spain herself settled it by a treaty signed at Madrid, on October 27, 1795, and recognized American ownership of nearly all of the Mississippi territory. During the next four years the sole acts of the Americans consisted in making surveys, while the Spaniards gradually evacuated the country. Complete physical possession by the United States cannot be said to have been had until the year 1799.

But on April 8, 1798, Congress had created out of the debatable ground a new territory. By that act the limits of the State of Georgia were defined, and Mississippi was created. The ordinance of July 18, 1787, creating the northwest territory was applied to Mississippi, the common law was introduced, and slavery as it then existed was permitted, but further introduction of slaves was prohibited. Upon the organization of the territory, President Adams appointed three judges, only one of whom was a lawyer. The latter, together with one of the other judicial appointees, "aided the governor," says Claiborne in his **History of Mississippi**, p. 209, "in concocting a code of laws incompatible with the spirit of our institutions and with the Constitution of the United States, most of which were annulled by Congress, and soon after this worthy pair disappeared and never returned. These laws were copied from an arbitrary code framed when Sargent was secretary of the Northwest Territory, in conformity with his notions of expediency, and not drawn, as the ordinance of the Northwest Territory provided, from such laws, civil and criminal, of the other States, as may be best suited to the circumstances of the district."

The criticism levelled against this code resulted in an act by Congress, passed in 1801, taking from the governor the law-making power and delegating it to the territorial legislature,

and the first Code of Mississippi was consigned to oblivion. The first digest of laws in Mississippi was completed in 1807 by Harry Toulmin, under authority of an act of the Legislature. By the Constitution of 1817, section 5 of the schedule, the new State of Mississippi drifted further away from the moorings of the Civil Law by declaring the common law to be its fount of justice.

The admission of Mississippi as a State necessitated a new codal revision, and under the guidance of Governor George Pointdexter, the revision of 1822 occurred. A new constitution was adopted by Mississippi in 1832, and the adoption of a new code was authorized. The effects of this revision may be best described in the words of the Mississippi historian, Claiborne, page 473 :

"After these radical changes, and the modification of existing laws that necessarily followed, a new digest was called for, and, in 1833, Mr. Pray. the president of the convention, was authorized to prepare it. Mr. Pray was a native of Maine, had a collegiate education; and taught school for a while in Westchester county, New York. He was industrious and methodical, with abundant learning, but his code was not a success. It was by no means satisfactory to the profession. It was too ambitious of originality, and was too much flavored with the civil law. Mr. Pray resided at Pearlington, near the seaboard, where lands were chiefly held under old French and Spanish grants, and he had occasion to study the civil law, and like many others, became enamored with it. He often attended the courts in New Orleans, and occasionally practiced there in connection with the late Gen. E. W. Ripley, who, besides being a gallant soldier. was an eminent civilian. Hence, the leaning in the New Code to the Roman law, which made it unpalatable to the disciples of Coke. In 1838-9, Volney E. Howard, state reporter, and Andrew Hutchison were appointed to make a new digest."

And with Mr. Pray's unappreciated attempt to reincarnate the civil law in Mississippi, it passes forever out of the history

of the jurisprudence of Mississippi save as a memory, and the common law became firmly embedded as the primary legal system of Mississippi.

In the meantime Mississippi's neighbor, the Territory of Orleans, today the State of Louisiana, fought strenuously at the prospect of being torn away from its beloved Civil Law. On December 20, 1803, Governor Claiborne took charge of Louisiana on behalf of the United States. Immediately upon his arrival in New Orleans, he proceeded to organize the judiciary. He had been given powers similar to those officials of the United States who had organized the Mississippi Territory, and he was acting under the ordinance which created the Northwest Territory.

The ordinance creating the Northwest Territory has provided for the use of the common law in the country to be governed by that charter, and Governor Claiborne forthwith introduced the common law into Orleans Territory. He was then the absolute arbiter of the destinies of Louisiana. In him were embodied the three great co-ordinate powers of America; that of the executive, the judiciary and the legislative. He was trained in the school of common law and he could no more understand the civil law than the civilian of Louisiana could understand the common law.

"Suits," said Gayarre. in his **History of Louisiana, Vol. IV., p. 12,** "were to be instituted by a petition in the form of a Bill in Chancery. These words 'A Bill in Chancery,' fell strangely on the ears of the old inhabitants of Louisiana. What was meant by chancery? What was a bill in chancery? The attempt to enlighten them on the subject would have been ludicrously futile; hardly any one would have understood the explanation, and no explanation was sought, or given. The definition of crimes and the mode of persecution in criminal cases, according to the common law of England, were adopted, and were not more intelligible to the people. Common law! What was it? They were told that it was "unwritten law." Unwritten law! That, indeed, was something new under the

sun for those who had always been governed by precise laws, regulations and ordinances! How could law be unwritten? Where was it to be found? They were answered, it was 'that law which draws its binding force from immemorial usage and universal reception in England.' Is it to be wondered at if they shook their heads in utter bewilderment? But when it was added for a clear elucidation of the matter that they might, if they pleased, take it to be 'a body of rules, principles and customs, which derived their authority and sanctity from their filtration for centuries through the thick strata of successive British generations,' and which, originating in natural justice and equity, or local customs, were only to be evidenced by the records of judicial decisions scattered through hundreds of volumes written in a language which they did not comprehend, the only distinct impression which such an explanation left on their minds was that the common law was the most unfathomable of all laws, and some mysterious and complicated engine of oppression, which would certainly be used to their detriment. * * *"

Immediately upon the wiping out of a system of jurisprudence that was already a century old, the population arose and evidenced their protest by a mass meeting and the sending of a delegation to Congress. Congressional action was had, and permission was given for the Territory of Orleans to elect its own legislature. This legislature met in 1805, and one of its first acts was to provide for the preparation of a Civil Code. The jurisconsults designated to prepare this Code proceeded to build upon the projet of the Napoleon Code, which body of law was promulgated as the Civil Law of Louisiana, now commonly known as the Civil Code of 1808. The growth of the territory, and the admission of it to statehood necessitated an elaboration and a revision of this Code in 1825, and the abolition of slavery, and the reconstruction of Louisiana impelled another revision in 1870. Since then one other revision has been contemplated, but such is the sanctity of the Louisiana Civil Code that any wholesale tampering with it is met with a prohibition in Louisiana. And today our Code stands as it did nearly a hundred years ago, a mirror of judicial

principles, containing a rule to right every wrong, and clothed in the magnificent genius of the Roman, the Gaul and the Spaniard. Indeed it is claimed that the common law is but the prodigal son of the civil law, who reversing the parable, has lived and prospered exceedingly in the far country.

But it is not my province today to discuss the splendor of the civil law. Every one who has marveled at its learning becomes a slave to its charms, and a student in the school of the civilians cannot see any master save his own. We of Louisiana are wedded to the Civil Law, and you of Mississippi are wedded to the Common Law, and perhaps each of us is wondering how the other could possibly love his chosen spouse.

And so we have seen the great commonwealth of Mississippi drift from its nursery laws, and join those other States of the Union who have the Common Law for their guiding star. And we have also seen Louisiana stand by the Civil Law, and protest against its abolition. Nor is it difficult to understand why these sister states should each go in the opposite direction. Louisiana in 1803 was ruled by New Orleans; over ninety-seven per cent of its population was of French and Spanish nativity. These people had not merely a cursory acquaintance with the Civil Law, but their common ancestors had carried the legions of the Civil Law from the Tiber across the whole continent of Europe. The Code in its virgin integrity had not been preserved, but the **pater familias** had handed its tradition down from one child to another, and the tribal customs had always been regulated with due regard to the Roman laws. The Civil Law was bred in their blood and in their bones, and was as much a part of their life as was their church. And so Louisiana's legacy from France and Spain was the Civil Code, a legacy the fruits of which are today eagerly gathered by every Louisiana lawyer, no matter whether he originally came from Massachusetts or whether he originally came from Paris.

It is equally easy to understand how Mississippi became a Common Law State. In 1799 when it became a part of the United States it had a scattered population of six thousand

people. including slaves. When Spain evacuated Mississippi there remained five thousand persons. Most of these were of Anglo-Saxon descent, although many were of French and Spanish origin. The influx of population from Georgia, Tennessee, Kentucky and Pennsylvania, reduced the Latin population of Mississippi to a minimum. So Mississippi naturally gravitated to the Common Law. Most of its population was of Common Law legal origin, and the Common Law habit was as ingrained in its system as was the Civil Law in the system of Louisiana. So, as to them, the change was as imperceptible as the receding of the sea from the shores at ebb tide. They were ready for the change, and in all likelihood they welcomed it. And so, the variance in nationalities completed the legal as well as the physical partition of Louisiana and of Mississippi. But had the Mississippian in power in the early nineteenth century been so long sheltered by the Civil Law as had the Orleanian, it is probable that today we would be celebrating together the greatness of the Napoleonic Code.

And so, ladies and gentlemen, we have seen the birth of our States, their union, and their divorce. Is it too much to hope that one day will find them both administered under one Code, which will unite in itself all that is great, all that is grand, and all that is equitable in the Civil and the Common Law?

"THE CASE OF THE LOST MILLION."

Address by J. M. Beck, Esq., of the New York Bar.

Mr. Chairman. Gentlemen of the Joint Associations, Ladies and Gentlemen,—not, as the eloquent preceding speaker said, "without dscrimination," but ladies and gentlemen with discrimination, by which I mean that the ladies are the vested estate of humanity, and the men only a kind of contingent remainder:

Let me in the first place express my very deep appreciation of the great honor that has been done me by your two Associations in inviting me to address you upon this occasion. I only hope that your experience will not be that of a small boy who, having valorously struggled with the alphabet for a space of forty-eight hours, remarked that he had at last acquired it, but was doubtful whether it was worth while to go through so much to learn so little; and I also hope that you will not share the experience of an old farmer in New England, who went to Boston to hear the great philosopher, Ralph Waldo Emerson, and it so happened that Artemus Ward was to lecture in the adjoining hall, and, by some mistake, the farmer got into the wrong hall, where Artemus Ward was delivering a humorous lecture. As he emerged from the hall, some one said to him: "What did you think of Ralph Waldo Emerson?" "Well," he replied, "he was pretty good, but it was not quite what I expected."

My address will be something of an innovation at a bar meeting, and for this I had two reasons. My subject, although it has some distant relation to both the bench and the bar, is not, I may frankly warn you, strictly a legal subject. I chose it for two reasons. In the first place, if I had selected such a legal subject as that with which my own professional career has been most connected, I might inadvertantly wander into the sphere of controversial public questions, and that, for obvious reasons, I was anxious to avoid. But there was another, and, perhaps better, reason. I have often been im-

pressed at bar meetings in this country at seeing the fairer portion of humanity—the vested interest to which I have just alluded—trying, with their most polite, and, at the same time, praiseworthy attention, to follow a discussion on some technical subject, as the nature of a contingent remainder, or the rule in Shelly's case, somewhat in doubt as to whether Shelly was a poet or a lawyer. And it occurred to me, therefore, that if I could select a subject which, while having some propriety at a bar meeting, would also be of some general interest to the ladies who would honor us with their presence, that perhaps you would, even if my idea resulted unfavorably, give me, with your Southern chivalry, the credit of a high and praiseworthy intention.

My subject ought to appeal, unless the narrator shall hopelessly fail in his effort to present it to this audience—to your patient attention, because it relates to one of the most dramatic episodes in the history of our nation. Furthermore, it ought to have an interest to those of you who are familiar with, and who are ardent students of our history, because it relates to a comparatively unknown episode, which has a most intimate connection with two epoch-making revolutions—the one our own American Revolution, and the other its swift-following successor, the French Revolution. Upon the other hand, it will, I trust, be of some interest to an audience of lawyers, because it concerns the remarkable and picturesque career of one who was not only one of the most extraordinary personalities of the eighteenth century, but also one of the most persistent litigants of whom I have any knowledge. From his twenty-first year until his death he was almost incessantly embroiled in law suits, and I am sure I cannot commend him better to the good favor of this audience of lawyers, because the persistent litigant is one in whom the bar especially delights. But he was remarkable in this, as you will presently see, that he gave the most successful refutation to a maxim almost universally accepted by the bar, that a layman, who is his own lawyer, has a fool for his client. He was often his own lawyer, but he was neither a fool as an advocate, or as a client. Finally, it ought to inter-

est an audience of American citizens, because it is my theme to demonstrate to this audince that, but for the indispensable contribution to the cause of American liberty of this man, it is altogether probable that these United States of America would never have been.

My address shall take the form of a legal argument, because that will make it a little more pertinent to the occasion. I shall constitute you all members of an extraordinary court. This may not be disagreeable to any judicial aspirants here assembled, for I suppose there are some young lawyers here. like in my own State, who say, with Absalom, "Oh, that I were made judge in the land, that every man which hath any suit or cause might come unto me, and I would do him justice." These I shall not offend by making them **pro tempore** judges. To the judges who are judges, **de facto et de jure,** let me only say that if I am inflicting a double burden upon them of hearing another argument in vacation time, they can have resort to that most ancient and honorable prerogative of the bench—they can take a nap.

Richard Brinsley Sheridan, when he produced his tragedy of Pizarro, learned that Lord Eldon was going to be in the audience, and when it was over, and his friends were congratulating him, he said: "What did Lord Eldon think of my tragedy?" One of his quizzical friends replied: "To tell you the truth, Sherry at the most pathetic part of your tragedy, I looked at his lordship, and he was fast asleep."

May it please your Honors, one and all, this is an imaginary action brought by the estate of Pierre Augustin Caron, of Paris, France, against the United States of America, for the recovery of two million, eight hundred thousand francs. of which one million is "the lost million," and his descendants would recover for his estate a sum advanced by him to the United States at the period of its greatest stress.

In order to defeat any defense based upon prescription,

let me say that, if the statute of limitation, which is an altogether popular plea these days, is interposed as a barrier to my client's claim, now preferred again after more than one hundred and thirty-seven years, let me say that the suit is brought, may it please the court, to recover, not merely money, but a long over-due debt of appreciation and gratitude. For I venture to say that I could take a poll in any part of the United States of ten educated men, and only one of the ten would be familiar with the facts which I am about to recite, and which, although I am assuming the part of an advocate, I give you my assurance, are based upon the most authenticated historical records.

The gravamen of my action is that Pierre Augustin Caron rendered to the United States, at a time when it most needed it, services, without which Washington's army would probably have perished before the end of 1777.

Let us consider the situation at the beginning of the Revolution. That Revolution was an act of sublime audacity. It is very hard for us today, in this hour of our acknowledged power and almost invincible strength, to appreciate that no reasoning man could, at the beginning of the Revolution, regard as more than a remote possibility the triumph of our cause. So much was this the fact, that, if we were to take the utterances of the great leaders of the revolution at the beginning of the struggle, we would find that there was hardly one who did not disclaim any purpose whatever of separation from the mother country.

The desperation of our cause was not due to the lack of fighting men. We had in this country, it is computed, about two million, one hundred thousand white inhabitants, and, assuming that half of these were men, it left a homogeneous population, descendants of path-finders and pioneers, men accustomed, for the most part, to the musket, and to hardship. As a result, we had a population that ought to have been able to have placed in the field at least fifty thousand men, and even with the meagre facilities of transportation, we would

have been, if other things were equal, invincible to any force that England could send against us.

But apart from the fact, which we now in our patriotic pride are apt to ignore, that the people of the colonies were by no means agreed as to the policy of the Revolution, a very considerable proportion dissenting from it, and still another proportion adopting a shifting attitude of waiting for the issue of the struggle as it proceeded, there were then many other circumstances which we must take into consideration. We had at that time not a single manufactory of powder in this country. It had been the policy of the lords of trade which governed the colonies to strangle American industry, and as a result there was at the time the American farmers fired the first shot on the village green at Lexington, not a powder mill in the United States. There were, so far as can be accurately stated, only two manufacturers of muskets, and those painfully inadequate to carry on any campaign of even short duration. The result was that while at that first shot that went around the world, sixteen thousand men before that week was out, had gathered at the gates of Boston and besieged Gates' army, yet they were not only without tents, and obliged to live in rude huts, constructed of sand and dirt; and without uniforms, but they did not have powder enough to last more than a few months.

The Massachusetts Committee of Safety made an accurate estimate of the existing supplies for the hastily improvised army, and here it is:

On April 19, 1775, the Committee could only count twelve field pieces, 21,000 firearms, 17,000 pounds of powder, 22,000 pounds of ball; and for food, 17,000 pounds of salt fish and 35,000 pounds of rice. Such was the destitution of the army in that which is the food of an army—namely, powder and shot.

As these statistics show there was barely a pound of powder apiece for each soldier, in a war that might last, as it

did last, for years. So destitute were they in the wherewithal to fight, that Washington, when he assumed control at Cambridge, had kegs of sand labeled "powder" rolled into the camp in order to delude his soldiers into the apparent security that there was plenty of ammunition. That was the main reason why Washington's rapidly mobilized army of sixteen thousand minute men shrank nearly to three thousand after his leaving the siege of Boston and was defeated in New York, and fled in orderly retreat across into New Jersey. That was so plainly the fact that so great a man as Franklin—the wisest man in the eighteenth century—actually advocated the use of bows and arrows in order to fight the invader. While the idea was absurd in the extreme, it showed the desperation of the cause. that so great a man could gravely advocate that with bows and arrows and scythes and farming implements, they could face the trained grenadiers of the British army. And Washington—the great-hearted, leonine, magnanimous Washington—greatest in soul of all men since the tide of time began—so clearly recognized the desperation of the cause that, to quote his own language, he says:

"We must then retire to Augusta County in Virginia. Numbers will repair to us for safety, and we will try a predatory war. If overborne, we must cross the Allegheny Mountains."

So that all that that man, whose courage seemingly never failed him, could see in the immediate prospect, was that there might be, as in the case of the Boers in South Africa, a great trek across the mountains into the unbroken wilderness.

It is recorded that men later went about the streets of Philadelphia and begged the pendulum off the clocks in order to turn them into lead bullets, and the remotest settler upon the outskirts of the wilderness would give up his powder horn in order that the few ounces of the indispensable commodity could be given to the general store, and some complained that they were left defenseless from the savage foe.

Where could these brave men look for any relief? What probability was there that any nation would aid them? Remember that not only was England then the first power of the world, and no nation would without the greatest hesitation challenge that power by openly helping us; not only had we disclaimed any attempt to separate, and therefore any invasion by any foreign power would be as if England was today to interfere in our mining war in Colorado, or as if we would interfere in the present strife in Ulster. There was also this very substantial reason that France, as every other European country with the exception of Switzerland, was an absolute monarchy, and why should their governments encourage in the smallest degree our revolt against authority.

How then, did it come that France, laying aside the prejudice against the English colonial yeomen, who had climbed with Wolf and his English grenadiers the Heights of Abraham and wrested the Canadian empire from France, come to help us?

My client, may it please the court, Pierre Augustin Caron, was the first and most potent factor in reversing France's policy and making her our ally. Long before Franklin reached Paris, late in 1776, and before there was a suggestion of an open alliance—France was secretly helping us; but this was due to my client, for whose claim to gratitude I am pleading at the bar of this Court.

Caron was the son of a watchmaker in the City of Paris, and himself a watchmaker. He was not without education. His father was a man of intellectual force and varied accomplishments, and his four sisters were accomplished musicians. When the day was over, Caron, working as he did from seven in the morning until six at night, at the bench in the shop, the evenings were spent in literary work, and especially in musical pleasures, in which all the family were proficient.

When young Caron, who received a very limited school education, was twenty-one years of age, he invented an im-

proved escapement to a watch, which made it possible for watches to be made far smaller than had ever before been possible. In an imprudent moment he showed his invention to a rival watchmaker, and was surprised to find a few weeks later in the Journal of the Academy of Sciences of Paris, the announcement of his invention made by his disloyal friend as his own.

At a time when justice was administered with slight regard for human rights, and frequently bought and sold, an unknown watchmaker of twenty-one would not have thought that he had very much opportunity for redress against his rival for stealing his invention. This young Caron was, however, a man of unusual attainments, and he wrote a memorial to the Academy of Sciences, so cleverly worded that he not only persuaded them to look into the case, but, like Byron, after writing Child Harold, he awoke to find himself almost famous in a night. A committee of inquiry was appointed, which reported in favor of young Caron, and he thus won in his first contest a signal victory.

This probably suggested to his mind that possibly there might be a larger career for him than at the watchmaker's bench, and for this there was abundant reason. He was a man of more than ordinary personal beauty; of engaging presence, brilliant and witty in conversation, with a mind that even in his last days and during all his troubles, never failed in effervescent gaiety, and gifted with the pen to a degree so remarkable that his writings are to this day among the classics of French literature.

The day of the commoner was then dawning in France and penetrating even the Court at Versailles, so Caron determined to try to climb the slippery ladder of court preferment. He went to Court at Versailles, Louis XV being king, and opened his career by presenting the king with a watch, and followed this up by presenting the king's reigning favorite. the Marquise de Pompadour, with a watch so tiny that she could wear it as a ring upon her finger. She and the king were

so delighted that they gave the young watchmaker an audience, and, presuming on this familiarity with the court, he assumed the title of watchmaker to the king.

With this first start he waited an opportunity for a larger field of usefulness. Louis XV had four daughters that were very fond of music, and young Caron could play, with a great deal of proficiency, the flute, violin, and also, an instrument that was comparatively new in France, the harp. When the young princesses heard that, they sent for Caron and asked him whether he would not teach them to play the harp, and thereby he became for the princesses a kind of **arbiter elegntiarum**, and whatever they desired to arrange in the way of social pleasure of any kind, or in the matter of studies, was arranged through young Caron. although he was simply a commoner.

Then, looking about for further opportunity, he found it in the wife of an officer in the court, who was known as the clerk of the king's kitchen. As you may remember, Louis XV, as his father, the so-called Sun King, always dined in public. The result was that the serving of the table was a pompous ceremony—two guards went ahead, and then came the comptroller of the king's kitchen, and then various lackeys, with swords to their sides, and thus a little army accompanied the king's roast until placed safely upon the royal table.

On the death of this clerk of the kitchen Caron married his widow, and gained the late husband's position.

At that time he was a comparatively poor man, and to live in a court as luxurious and profligate as that required a considerable expense of money. It so happened that there was at that time a rich contractor named Duverney—an army contractor and banker—who had made a great fortune. Duverney, following in the manner of a great many financiers of the present day. determined to build a philanthropic institution that would attest his public spirit, and so he built on the Champ de Mars, where you can see it today, a military school,

and was very anxious to have Louis XV give it the prestige of a royal visit, but the indolent and luxurious king refused to do so; and finally Duverney heard of this resourceful Caron who was making such marked headway in court, and he enlisted his good offices to arrange the royal visit. Caron took it up first with the princesses, and induced them to visit the school and then influenced them to ask their royal father to do so, so that finally Louis, accompanied by the more intimate members of his family, made a visit of state to the Duverney school.

Duverney was so pleased with Caron's resourcefulness that he took him into partnership, and young Caron rapidly became rich, in the manner of these days, when army contracts were enormously swollen with inordinate profits. Such profits have not altogether passed away.

In the court, where almost every man had noble blood in his veins, Caron was naturally subject to all manner of insults, and was not liked by many because he was a commoner. It was still regarded as the height of presumption for a commoner to penetrate within the sacred precincts of that court. On one occasion a group of courtiers, wanting to insult him, one of them took out his watch and said: "Will you be good enough to repair my watch? It is out of order." Caron, knowing that the man intended to insult him, said: "Be it so, but I have not practiced my art as a watchmaker for several years; I fear I have grown somewhat awkward. But I will try." He then deliberately let it drop, and it broke into a thousand pieces, whereupon, bowing sardonically to the courtier, he walked away.

Another courtier, who was an expert swordsman, challenged him to a duel, and it illustrates the fine chivalry that existed even in that most profligate period, that, after this man deliberately picked a quarrel with Caron, and agreed to fight in a lonely part of the royal forest without seconds or witnesses, because of the strictness of the laws against dueling that then existed in France, that after Caron had run his challenger through the breast, and saw blood gushing from his

wounds, he was sure, as the man was sure, and as it proved, that it would be fatal, and the man told him to fly, inasmuch as it meant almost certain punishment in the Bastile for Caron, Caron refused to do that without first trying to send this man succor, even at the possible expense of his liberty. He went to the nearest town, aroused the surgeon in the middle of the night, and told him where he would find this wounded man, and then betook himself to Paris, in order to determine what his next step would be. The man lingered for nine days, and, although he was pressed by all his family and friends to reveal the man who had given him the fatal wound, he died with it a secret. The fine chivalry of this dying man thus protected Caron from punishment. Caron, not knowing this, finally determined to go back to court and face the music. He went to the princesses, whose closest friend he was, and told them the difficulty he was in, and they spoke to Louis XV. who, in his indolent way, said: "Oh, well, arrange it any way you please, only do not let me know anything about it." The result was Caron escaped any punishment.

Now comes the second great contest in Caron's life that gives him interest as a litigant. You will find here, gentlemen, an article to the judiciary that is not only famous in the history of France, but which, perhaps, never had an equal, considering the unequal odds against which Caron pleaded.

I should first explain that Caron, having bought a fictitious title, had assumed the name by which he is best known in history. Thenceforth he was known as Pierre Augustin Caron de Beaumarchais, and he is now known in the history of the stage and literature simply as Beaumarchais.

His partner, Duverney, having died, leaving a nephew, whom Caron had befriended, and whom Duverney had disinherited, and another nephew to whom the estate was bequeathed, who therefore had a great grudge against Caron, and was a very influential man in the French court. His name was Count de la Blache. Upon his uncle's death de la Blache alleged that Caron was indebted to his uncle's estate, and

Caron produced a receipt, which showed that, far from owing Duverney's estate anything, there had been a mutual cancellation of debits and credits, and, in point of fact, the Duverney estate owed him about fifteen thousand francs.

La Blanche charged that the instrument was a forgery, and instituted a suit against Beaumarchais to cancel the document as fraudulent and forged, and to recover a very large sum of money, that would have ruined him. Beaumarchais took up the litigation. and in the first court — the court of first instance — he secured a judgment in his favor, but an appeal was taken to the highest court in Paris, known as the Parliament of Paris (Parlement de Paris). That parliament had a sinister name, because it had been recently constituted. The old Parliament of Paris was one of twelve similar parliaments, having both legislative and judicial duties, and it was the only organ through which the voice of the people could reach the court. But under Louis XIV the parliaments were rarely called into session, except for judicial purposes, and when Louis XV became king he became so annoyed and embarrassed by the occasional complaints that welled up from the submerged people through the Parlement de Paris, that shortly before the Duverney suit he had abolished the old Parlement de Paris, and substituted for it a parliament constituted by his own royal minions. This was called Meaupeau Parlement. It was the custom of that time for the parlement to delegate one judge, called a reporter, to whom the litigants came successively, and had personal interviews, but in addition to these personal interviews and investigations, such controversies were conducted by a kind of trial by newspaper or pamphlet in the form of so-called memorials, which passed from litigant to litigant. and which sometimes attracted public attention, especially when they were well written.

Beaumarchais thus found himself face to face upon this appeal before a corrupt court, the Meaupeau Parliament, against an antagonist who stood very high in the French court, and had behind him the prestige of the Duverney millions.

Unfortunately he was already involved at that time in another personal controversy with an even more powerful antagonist, with regard to a lady of the opera. A certain Duke de Chaulnes had been attentive to a Mademoiselle Menard, and became very jealous of Beaumarchais, and Mademoiselle Menard having made an imprudent remark which was favorable to Beaumarchais' personal attractiveness, the duke, who was a man of violent and almost maniacal temperament, said he would before night fell search all Paris for Beaumarchais and kill him on sight. With the insanity of a jealous man he went, sword in hand, through the city trying to find where Beaumarchais was. Among Beaumarchais' many court duties was that of presiding over a little court that tried cases of poaching upon the king's hunting preserves. While the duke was looking for him Beaumarchais was administering justice on the bench of this little court of the king's royal warrant, as it was called. The duke rushed into court, and after making a very unseemly disturbance. Beaumarchais (I am not romancing—I am giving extracts from official court records all the time), adjourned the court in order to invite the duke into his judge's chamber and ask him what his pleasure was. The duke replied: "I am going to kill you, tear your heart out and drink your blood." "Well," Beaumarchais calmly said, "in that case it must be business before pleasure. I will resume my place on the bench." And he resumed his place on the bench, leaving the infuriated duke to storm in impotent fury in the lobby.

Finally, when Beaumarchais had leisurely prolonged the proceedings as far as possible, he adjourned court, and came down in his bland and inimitable style, and said he was now at his royal highness' pleasure. The duke then told him he wanted to fight an immediate duel, and suggested that they repair at once to a certain nobleman who would second him, from whom they could get the necessary swords. They got into a carriage and went to this nobleman, and this nobleman, thinking that a few hours might possibly have a cooling effect on the irate duke, said he had an engagement at the palace, and could not see them until four o'clock, but would endeavor

to accommodate them at that hour. Beaumarchais turned to the disappointed duke and coolly said: "Can I have the pleasure of having you dine with me?" The duke, strange to say, accepted, and, when at the table in the bosom of the Caron family the duke became so exceedingly offensive that Beaumarchais said: "Let's go into my room and we can talk it out there." Then they went into the room, and the duke being bent on murder, saw on the bureau a short sword, and suddenly seized it with the idea of killing him, and Beaumarchais, who was himself a very powerful man, threw his arms around him, and caught his wrist, and then two or three of his servants flung themselves upon the would-be murderer with the result that the duke was held down until a commissary of police arrived. A trial was had before a magistrate and the duke was imprisoned and Beaumarchais was acquitted.

That did not suit the court. The result was that under a royal warrant—**a lettre de cachet**—Beaumarchais was sent to prison. Thus he found himself in prison at the very time when he was obliged to try this case against the Duverney estate, and after considerable trouble, he received through influential friends, of whom he always had an abundance, permission to go out by day, provided that he would return by night, and always be accompanied by a guard. Leaving his prison for these shorts periods of time, he was then told that it would be impossible to have his personal interview with the judge whom the court had delegated as reporter, whose name was Goezman, unless he would first pay to the judge's wife two hundred louis, and give an extra fifteen louis for the judge's secretary. And while it may shock us—and I am not trying to make my client in all respects a hero after the customs of the time, bribery being then a common occurrence in France, and that being the only way to get the interview—he gave to Madame Goezman the two hundred louis and the extra fifteen for the secretary. Then he had his interview with Goezman, and two days later Goezman decided the case against him, and held that the receipt given, if not technically a forgery, yet a spurious document, which meant social ruin to him.

With that, the frail lady of the judge, possibly scenting danger, returned to him the two hundred louis, but failed to return the fifteen louis, on the ground that she had not received it, but the judge's secretary had. Beaumarchais then went to the judge's secretary and asked him whether he had received fifteen louis. The secretary replied that he had not. Thereupon, the resourceful Beaumarchais sent a demand to the judge and his wife, demanding the immediate return of the fifteen louis, or he would make trouble, and the judge, knowing that he was now in danger, felt that the surest way was to openly face the charge, and he went before his brother judges of the Meaupeau Parlement, upon whose fidelity to him he felt that he could count, and charged Beaumarchais not only with being the forger of the Duverney receipt, but also briber of a judge, and Beaumarchais was obliged to face that added charge.

There was not a lawyer in Paris who would defend him because the aristocracy and the Parlement de Paris were behind the corrupt regime; but Beaumarchais placed his reliance in that which was becoming a new force in French society; he had public opinion against the Meaupeau Parlement, and without stopping to count the cost, he commenced to launch against the whole Meaupeau Parlement a series of charges, just as Zola impeached, in our time, the military tribunals, and, as we will see, with the same result. He used philippic after philippic against the French judicial system, and showed its unquestionable corruption, and as a result of his efforts all Europe became tremendously interested in his mighty struggle. Each memorial was succeeded by another with more biting wit and sarcasm in which this man, with his back to the wall, and no advocate to defend him, simply branded his accusers and judges with judicial infamy, and finally, as I have said, all Europe was stirred with the excitement caused by the Beaumarchais trial and as a consequence, when, after seven months of these attacks and counter attacks, it was announced that the Meaupeau Parlment would render its decision, all Paris was on tiptoe to learn what the Meaupeau Parlement would do with the problem they had before them. It was no longer

Beaumarchais who was on trial. It was the highest court in France.

A great crowd gathered around the courtroom. Finally the judges tried to solve the difficulty by one of those judicial compromises which have rarely been effective in the history of litigation. Upon the whole their decision was not unreasonable. They condemned Goezman, their colleague, au blame—that is, to be dismissed from the bench. They condemned him and his wife to civic degradation. This carried with it absolute incapacity to hold any public office, and, ordinarily, it would have meant social ruin.

When Beaumarchais came out of the courtroom, it being the procedure of the time that he had to go down on his knees before the court, and have this terrible degradation inflicted upon him, the great crowd cheered him with enthusiasm, and as the judges came out they were hooted and hunted to their very doors, until as was subsequently said by, I think, Louis XV, when one of the judges complained to him that they could not go to court without molestation, and Louis XV said: "Well, you had better go in dominoes."

Thus Beaumarchais became for the time being the most talked of man of his day, supplanting in popularity men like Voltaire and Rosseau, who had sowed the seeds of public liberty by their previous writings.

A man so useful as this was not going to long remain in shadow. Louis XV had far too much need of him.

In the meantime Beaumarchais reached the conclusion that another effective way to destroy a rotten institution was through the stage, and for this purpose he wrote a comedy of which all of us have heard, and to which some of us have listened in the form of an opera. He wrote Le Barbier de Seville.

Having lived for a short time in Spain, he had acquired some knowledge of the Spanish character, and in the charac-

ters of the comedy, in Rosina, and, above all, in the character of Figaro—Figaro being his mask, because Beaumarchais himself was the witty, resourceful, irrepressible Figaro from the beginning to the end of his life, he presented so directly and plainly in his comedy his own struggle for justice that the censor at first refused to allow it to go on.

One witticism of the Barbier de Seville will appeal to us as lawyers. We often say, and it has almost passed into proverb that every litigant who loses his case has the constitutional right to swear at the court. In the Barbier de Seville he says in substance: "I know it is the custom of the Palais de Justice that a man has only twenty-four hours to curse the court, but I have twenty-four years on the stage." (I quote from memory.) And on the stage he puts this comedy, which, after several years of adverse action by the censor, was finally produced in 1775, amidst universal eclat, and it simply pilloried not merely the judiciary of France, but the court itself, so that he became, although an attache of the court, the rising genius of the French democracy.

Louis XV next determined to employ him in the secret service. There having appeared in London a brochure entitled "Memoires secrets d'une femme publique," a scandalous account of the then reigning favorite, the comtesse Du Barry, and Louis XV having vainly insisted on the extradition of Charles Theveneau de Morande, the author, the English publisher, or rather, an exiled French publisher, of the book containing those revelations about Madame Du Barry, the king accordingly determined to utilize Beaumarchais. He sent for him and told him that if he were able to accomplish this task, that the king would remember it by wiping out this sentence of civic degradation. So Beaumarchais crossed to England, found this man, and in a short time did what no one else had been able to do—secured every copy and burned them in a lime kiln, near London, and returned to Paris with the joyful news, only to find that Louis XV had died during his absence.

Louis XVI having ascended the throne, a publisher of

Amsterdam published, not so much a libel as a political document of grave import against Marie Antoinette, accusing her of not being able to give France an heir. Louis XVI, remembering the success of Beaumarchais in the preceding episode, sent him to Amsterdam to suppress this book. Beaumarchais went there, made his contract with the publisher, and, as he thought, obtained every copy; he paid the money and destroyed the copies, and was returning to France when he learned that the rascally bookseller had kept one copy and was on his way to Germany, apparently to republish it, a course that the blackmailer nearly always follows. Beaumarchais hastily pursued this man, and at last caught up with him near Nuremberg. He threw him from his horse and rescued from his satchel the last copy, and then fearing that perhaps there might be some other copy in the printing shops of Nuremberg, which were then so justly famous, he determined to go on to Vienna, and to see Marie Antoinette's mother, Maria Theresa, and have her take immediate and summary steps to stop the republication. He reached Vienna and obtained an audience with the empress. His passports were in an assumed name, and Maria Theresa could not believe that he was the famous Beaumarchais, the author of Le Barbier de Seville, and as a result he was thrown into prison and remained there until a month later when the word came from Louis XVI that this was indeed the famous Beaumarchais; whereupon the Austrian government released him with apologies, and he returned in disgust to Paris.

On his return a third secret mission was given to him.

There happened to be at that time a curious character by the name of Chevalier d'Eon. For forty-five years he had been known as a man, but he suddenly assumed the attire of a woman, and played the part so well that all Europe became interested in the question of his real sex. Many contended that he was a man, and some that he was a woman. Chevalier d'Eon, whether man or woman, had secured a number of confidential state documents, which he had obtained when he had represented France as a man in the diplomatic service, which

documents the French government was very anxious to secure.

Accordingly, Beaumarchais, the ever resourceful, was sent again to England in order to get those papers. It was in September, 1775, about five months after Lexington, and among the men Beaumarchais met in his confidential mission, was John Wilkes, the radical Lord Mayor of London, and the center of the revolutionary element in England. Beaumarchais met at Wilkes' house men of kindred sympathies and the radical spirits of the time. Among them was Arthur Lee of Virginia. He had been a law student in the Temple, and when Benjamin Franklin had to return to America and had given up his position as agent for the colonies, he asked Arthur Lee, although only a law student, to represent the cause of the colonies in his absence. Arthur Lee, as such representative, met Beaumarchais, and Beaumarchais and he frequently discussed the opportunity which this situation in America presented to France to discomfort England, and Arthur Lee, as Beaumarchais afterwards claimed, told him that if he could obtain any assistance in the matter of powder and shot and guns for the American colonies, that the colonies, if they were ever established as a free nation, would give to France a monopoly of commerce for a period of years such as England then enjoyed. Beaumarchais quickly appreciated this unique opportunity for France to humiliate her ancient foe and gain for herself substantial material advantages.

He suddenly crossed the channel and returned to Versailles and in his capacity as secret diplomatic agent of the king he obtained access to the king's royal cabinet, and there put before the king substantially this proposition:

He admitted that France could not then openly champion the cause of the colonies. "But," he said, "let us give aid to them secretly and if your majesty will give me the necessary means I will be responsible for their disbursement in obtaining arms and ammunition for the colonies, and it can take the form of a commercial undertaking, the colonies to return to me in payment, tobacco, indigo and rice."

Thus, as early as September, 1775, and long before Franklin reached Paris and before our fathers had the slightest idea that France was going to help us, Beaumarchais had laid his plans and those of France to give us secret, but substantial, aid.

As a result, on June 10, 1776, Beaumarchais received from the French government a receipt upon which the case of The Lost Million, as it subsequently developed in our diplomatic history turned. I want to read the receipt, because if my subject has any legal aspect at all, it will have it in the wording of the receipt.

Let me resume the fiction that I am addressing a court. May it please your Honors, in this document which I now produce, dated Paris, June 10, 1776. Pierre Augustin Caron de Beaumarchais signs this receipt:

"Received from M. Duvergier, in conformity with the orders of M. de Vergennes, dated the 5th instant, which I have handed to him, the sum of one million, of which I am to render an account to the said Sieur Comte de Vergennes.

"CARON DE BEAUMARCHAIS.

"Good for a million of livres tournois.

"Paris, June 10, 1776."

Beaumarchais also obtained an equal loan from Spain, which was then an ally of France, which was first paid into the French treasury to conceal its source, and then paid to Beaumarchais and he gave the same receipt, acknowledging receipt for which he would account to Vergennes, and with those two million livres he opened a commercial house under the fictitious name of Rodrigue Hortalez & Cie.

Before 1777 he had purchased arms, ammunition, clothing, tents and guns for an army of twenty-five thousand men; had not only transported them in his own chartered vessels and in the face of the English cruisers that swarmed the seas, across the Atlantic, but before the campaign of 1777 began, he had sent two hundred cannons and two hundred and fifty

thousands rounds of ammunition. DeKalb, Pulaski, Steuben, and many others were employed by Beaumarchais as mercenaries to come to our country and give benefit of their military experience.

Vergennes in substance said to Beaumarchais: "We will give you secretly these two million francs, but no one must ever know it. We are not prepared to quarrel with England. If you ever allow the secret to be discovered, we will disavow you. If it becomes necessary we will stop the ships from leaving France. We will repudiate any possible agreement with you. Therefore, it must take the form of a commercial venture, at your risk and subject to our repudiating you if it becomes necessary."

When Silas Deane, sent over by the colonies as the first representative in France, reached Paris in August, 1776, he first paid his respect to Comte de Vergennes, and asked him whether there was any way in which our armies, literally starving for want of powder and shot, could obtain a loan from from the French arsenals. The great foreign minister replied: "France cannot help you at all. We will not in any way countenance any violation of our neutrality obligation with England." But as Deane was about to pass out of the count's office, the Comte de Vergennes said: "There is a Spanish merchant who trades under the name of Rodrigue Hortalez & Cie. Possibly it might pay you, Mr. Deane, to go to him. Deane took the hint and went down to the Hotel de Hollande and found Beaumarchais and asked him if he was the head of the house. He said: "Yes, I am the head of Rodrigue Hortalez & Cie, and I shall be most happy, indeed, to send over to the colonies cargo after cargo of whatever you need, with officers to man the guns, provided that you will ship back to us tobacco, indigo and rice in payment." Of course, the colonists had no currency with which to pay.

Thus an agreement was made between Hortalez & Cie and Silas Deane for the shipment, and on the faith of this agreement Beaumarchais commenced his shipments, which he had

bought from the arsenals of France and awaited the agreed upon payments.

Unfortunately, Arthur Lee, who was a veritable marplot, sent word to the Continental Congress that although Beaumarchais' remark to Deane was that these cargoes of ammunition were sent as an ordinary commercial speculation, yet, as a matter of fact, that was merely a blind, and that these shipments were an absolute gift on the part of France, and that nothing whatever should be shipped back to Beaumarchais against these shipments made by him.

Meanwhile, Beaumarchais, in addition to these two millions had enlisted a great deal of private capital in his commercial house, and it was absolutely essential, as he had to account not merely to his creditors but to the government for his expenditures, that he should get payment from the Continental Congress. Two years and six months passed, and no payment came, and not only was he in despair, but was almost facing financial ruin. To bring matters to an issue Beaumarchais sent an agent by the name of De Francy to Philadelphia to insist that not another cargo should leave France unless Congress made some payment on account; the committee of Congress replied that there was to be no payment, and asserted an understanding that the shipments were a free gift from the king of France. De Francy speedily undeceived them. Accordingly, Congress instructed Franklin, who by that time had arrived in Paris, to ask Vergennes whether or not it was a gift, and the minister told Franklin that he could tell the Continental Congress that the French king had nothing whatever to do with it; that the French king had given nothing towards these shipments of arms and ammunition; which, in a technical sense, was true. He had given nothing. He had simply loaned it to Beaumarchais to be accounted for to Vergennes.

The Continental Congress then paid a small sum on account, and was about to liquidate the balance, when, in 1783, we asked France—the open treaty alliance having been signed and there being no further need for subterfuge—for an open

loan of six million more livres, and the French government drew up a contract in which, for purposes of accuracy, they stipulated just exactly what we had received by way of gift, and what we had received by way of loan, and in this they recited that, before 1778, his Christian majesty, the king of France, had given to the colonies as a free gift three million of livres, and after that date he had given them six millions and had loaned them quite independent of these gifts several millions more.

When Congress read that treaty they remembered that they had received two millions, because Franklin had in 1778 received two millions from Vergennes independent of Beaumarchais' two millions, in order that Franklin could support his embassy at Passy. When the treaty said we had been given three million pounds Congress not unnaturally asked: "Where is the third million?" It is now known beyond dispute that the missing million was in fact the one given to Beaumarchais. Our forefathers suspected this, and not knowing the form of the receipt which Beaumarchais had given to Vergennes, or the nature of this secret transaction, they naturally again believed that Deane's contract to pay for the supplies in tobacco, indigo and rice was merely a fraud on England, and that Beaumarchais was attempting to collect from them the value of a free gift.

They asked him the question whether or not that million had not been given directly to him for their benefit. He said, "No, not at all." He had to equivocate somewhat, because he had accepted this as a secret service fund from the king, and the king's honor was pledged in a certain sense to England that his government had not, prior to the open alliance in 1778 given help to the colonies. Therefore the mission having been an exceptionally confidential one, Beaumarchais could not, without the permission of the French king, reveal the fact that this million was, in point of fact, a subsidy, when his royal master, and his immediate superior, the French foreign minister, repudiated the suggestion that the third million was the million given on June 10, 1776, to Beaumarchais.

He had by this time assisted the American government to the extent of over five millions of livres in arms and ammunition, and of this he received until his death only a small fraction. Despairing of this debt ever being paid by our country, he resumed his varied work as a financier and dramatic author, poet, speculator, diplomat, and secret service spy, because he was one of those extraordinarily versatile men in which the eighteenth century, as the sixteenth, was so extraordinarily productive, and which seemed to have passed away in this industrial age, where everything is specialized.

He determined to write a successor to "The Barber de Seville," and he would call it "The Marriage of Figaro (le Marriage de Figaro), and just as Shakespeare to please Elizabeth, wrote "The Merry Wives of Windsor," showing John Falstaff in love. so Beaumarchais determined to show Figaro in love. But his real purpose was deeper and very radical. His target was this time much higher than the corrupt judiciary of France; this time it was the royal court itself, and the whole system of hereditary privilege. When the play was first submitted to the censor he said he would not tolerate it for a moment.

Great pressure was brought upon Louis XVI to have the play produced, and finally the king agreed to hear it read, and you will find in the Memoirs of Madame de Campan that she read it to the king, and when they reached Figaro's monologue in the third act, where he attacks the very foundation of the ancient regime, the king sprang up and said: "You might as well tear down the Bastile as to permit such a play to be produced."

Beaumarchais was a good deal of a Barnum, and he knew perfectly well, as he made Figaro say that the surest way to make a thing popular is to try and suppress it. So he simply read it in manuscript in the aristocratic salons, such as that of Madame de Lambelle, that unfortunate woman, who, you remember, in the first attack on the Tulleris, had her head cut off and put upon a pike, and held up before Marie Antoinette as

she stood at the grilled window of her prison. It was read in her salon and in many other salons in Versailles to the representatives of that chivalry of France which he was laughingly hunting to its death. Beaumarchais, far more than any of the liberty-loving philosophers that preceded him, literally laughed away the French monarchy, and I have the highest authority for that—I have the authority of Napoleon Bonaparte, because Bonaparte said that the Memoirs of Beaumarchais in the Goezman trial, his Barber of Seville, and his Marriage de Figaro, were the French Revolution in action.

He wrote it in 1781, and for three years the king would not withdraw his royal interdict, and Beaumarchais simply kept it in his desk, giving occasional readings of it in private houses. Finally, the pressure became so great upon the king, that, to please Marie Antoinette, he agreed that it should be produced in a small and insignificant theatre of Paris.

When that became known the crowd was so great that it was an historical event in the French stage. The auditorium was crowded to suffocation with the most eminent and powerful people of France to hear a play about which everybody had been hearing for three or four years. Just as the curtain was about to go up—it was a hot day, so that they were almost suffocating—Beaumarchais, with his cane, deliberately broke the windows to let in the air. Just as the curtain was going up, a royal guard came across the stage, and held up his sword and said: "By order of his majesty, the king, this play is not to be produced here or anywhere, now or at any time:" Then arose something never before known in France—at least, rarely, if ever known before, in such an audience. The titled auditors sprang to their feet, crying "Tyranny, oppression," and thus insulted the messenger of the king.

Beaumarchais merely said: "Very well, my play goes back to its portfolio," and he continued to read it in many private homes. Finally, Louis XVI, a rather vacillating monarch, agreed to let it be produced. The great night came when it was to be produced in Paris. The crowd—almost a mob—

gathered in the dawn of the preceding morning and waited patiently the whole day for the night to come. Titled ladies of the most exclusive circles slept in the actresses' rooms in order to be sure of a seat. They brought their tables and food to eat into the private boxes. The great crowd gathered about the iron grating that stood outside the theatre, and finally the mighty crowd in its impatience surged forward and broke down the iron fence and sprang towards the doors of the theatre three people were suffocated in the melee. Finally, in the twinkling of an eye, the theatre was filled, and the Marriage de Figaro was thus, in 1784, given for the first time.

It ran for three hundred nights, a thing absolutely unprecedented at that time, and Beaumarchais gave his share of the royalties to a hospital for nursing mothers, which, of course, added very much to his fame and popularity.

The Comte de Provence had been one of the most insistent that the play should not be produced, and shortly after the premier of the Marriage de Figaro the count made a bitter attack on the triumphant dramatist. Beaumarchais, who could never repress a witty saying, even if the object of it was of royal blood, replied to the attack by saying in substance: "What? Shall I, who have fought with lions and tigers now waste my remarks on a louse?" The Count de Provence indignantly went to the king and said: "This infamous man is calling your majesty a tiger!" Louis XVI was playing cards, and he took up the three of spades, according to an authenticated memoir, and wrote down on the spur of the moment: "Send Beaumarchais to St. Lazare."

That was not the Bastile where the political prisoners were imprisoned. It was the most loathsome jail in Paris, where degenerates were imprisoned. This man of fifty-two years of age, then the most splendid figure in the literature of his country, and who had rendered a thousand services to France and signal service to Louis XVI, was thus taken from his family and home and consigned to this loathsome jail.

The first day Paris woke up and characteristically laughed. "Figaro in prison"! A great joke! The second day they said: "What? Whose liberty is safe in France today?" The third day it became a rising, sullen murmur. Finally, word reached the king that there was danger of an uprising in France, if this distinguished poet and dramatist was not released. Louis XVI, who was at heart one of the kindest of men, and what irony that this kind-hearted and generally just king should have expiated with his head the mistakes of his predecessors!—made up his mind that he had done wrong, and he sent an order to release him. Beaumarchais, when the message of the king was delivered, said: "I will not stir from here until I know the charge that was made against me," because he was in ignorance of the cause of his detention. They came back to him and said: "You are charged with having insulted his majesty by likening him to a lion." Beaumarchais sarcastically replied: "Is it an insult for the king's most loyal subject to liken him to a lion?"

It reminds me of the American who, in Germany, said in a cafe that "the emperor was a jackass," and being hailed before a stupid police magistrate. said: "How can you tell that I was referring to your emperor? There is in Europe more than one emperor." "No, no," his honor replied, "our emperor is the only one that is a jackass. You must have referred to him."

Beaumarchais was then released, and Louis XVI, in partial expiation for his treatment of Beaumarchais, immediately commanded a special performance of Figaro, and ordered everyone of his cabinet to attend it; even permitted a little later a performance at the Trianon of the Marriage de Figaro, in which Marie Antoinette played the part of Rosina, and the Comte d'Artois the part of Count Almaviva, and he invited Beaumarchais to be the special guest of the court to see the Queen of France and daughter of Maria Theresa tread the boards of the theatre and play the part of the vivacious Spanish flirt. Could royal self-abasement go further?

Napoleon boasted that he had given Talma an audience of

kings and emperors, but Beaumarchais could claim that he staged his play with royal actors and actresses and was himself the audience!

The rest of Beaumarchais' stormy life can be very quickly sketched. Having spent his life in controversy, and having a sharp tongue, he was almost continually in a fight. He never lost his good humor and never attacked a man unless he was attacked, and he was always generous to a fallen foe. His papers after his death contained promissory notes aggregating 900.000 francs, of actors. authors, politicians, nobles and commoners to whom he had loaned money from time to time, many of them men who had been his personal enemies. He was most generous in his disposition, whatever his other personal faults.

However, in the latter part of his life he got into two controversies, from which he did not emerge with credit. He had organized a company to bring water from the outskirts of Paris to Paris. A firm of Paris bankers were short of the market, as we express it nowadays, and were anxious to drive the shares down, and Beaumarchais, who was the chief financial backer of the water company, proceeded to put the shares up, as he was a financier of considerable importance. Accordingly, those bankers employed a young advocate, whose name afterwards became famous, Mirabeau. Mirabeau launched an oratorical thunderbolt against Beaumarchais, in which he accused Beaumarchais of poisoning two of his three wives of forging the Duverney receipt, of bribing the Meaupeau Parliament, and of various other offenses, winding up in an attack which was very remarkable, coming from Mirabeau, whose life was of most profligate character, against the morality of both Le Barbier de Seville and Le Marriage de Figaro. While neither is a play calculated to be read in Sunday school, yet Mirabeau was not the one to cast a stone in this respect. Mirabeau's attack was terrible in its intensity, and, for the first time in his career, and for some reason hard to understand, Beaumarchais made no reply, and with that his popularity commenced to wane.

Then followed the so-called Kornmann litigation. He was an Alsatian nobleman, who had imprisoned his wife under a **lettre de cachet** in order to confiscate her fortune, and some friend appealed to Beaumarchais. He did not even know Madame Kornmann, but the case appealed to his sympathy. The idea of a young, beautiful woman languishing in jail, under an arbitrary warrant, while her husband was squandering her fortune, spurred him into action. Accordingly, he used his influence to obtain the release of the lady and thereupon Kornmann commenced a divorce action against his wife, and among other co-respondents Beaumarchais was named. Thereupon, a young advocate, who thereafter made himself famous, just as Beaumarchais had done in the case of the Duverney receipt, whose name was Bergasse, came to the front. He had no humor like Beaumarchais, but he had, like Mirabeau, a tremendous power of invective, and moreover he followed the tactics of Beaumarchais in not attacking Beaumarchais' action in the immediate controversy, as to which Beaumarchais was really innocent, but he started a tremendous attack upon the existing order, against which Beaumarchais, with somewhat lessened intellectual activity, and now himself rich and powerful, found it difficult to cope. He was no longer the poor young commoner with his back against the wall, but the rich and powerful banker and financier who was fighting a comparatively unknown young lawyer. At all events, the Bergasse affair did much damage to Beaumarchais' already waning popularity.

In the meantime, the Revolution broke with volcanic violence. Members of the convention, headed by Danton, Marat and Robespierre knew that there were 75,000 muskets in Holland and wanted to get them, and they sent Beaumarchais to get them. He agreed to do it. They gave him five hundred thousand francs in assignats, but made him put up, as collateral for the success of his attempt, seven hundred fifty thousand francs of money that passed current.

Beaumarchais went to Holland, and had to work very secretly, because England was attempting to find out where

those arms were, and to confiscate them, if they were the property of the French nation.

While in Holland in 1798 the Committee of Public Safety made up its mind that Beaumarchais was a secret royalist, proscribed him and confiscated his beautiful home near the site of the Bastile. What a situation! An exile, minus his seven hundred and fifty thousand francs, his wife and daughter thrown into prison, and daily awaiting, probably, that sad procession to the Place de la Concorde, where heads were falling by hundreds into the basket, and he in Holland, unable to help them, knowing if he came to Paris he would almost certainly lose his head. He, however, returned to Paris, attended a meeting of the Committee of Public Safety, and defended himself in a spirited speech, in which he ridiculed the personal appearance of Marat, and asked who Marat was, to assail him, citizen Baumarchais, who had done so much for French liberty. The Committee of Safetv, war having at that time broken out between France and several European countries, felt that France needed Beaumarchais' services more than his head, and sent him back to Holland to recover the arms. He returned to Holland, and had arranged by devious ways to get those guns for the French government, when suddenly the Committee of Safety again proscribed him, confiscated his fortune, and he remained an exile until Napoleon planted his guns upon the steps of the St. Roch, ended mob rule in France and brought law and order again into this unhappy country.

It only remains for me to tell you what became of "The Lost Million." I have sketched briefly and very inadequately Beaumarchais' career. Certainly Dumas never wrote anything more romantic than the sober facts that I have had the pleasure of relating to you in the most cursory way.

Beaumarchais had assured the Continental Congress that his demand for five millions francs — call it one million dollars — spent for ammunition and guns was not a gift, but was a sale, and that it was ruining him not to receive what was due him. Although Congress had previously assured him that it would

pay it, nevertheless, after its usual custom, failed to pay, to his great embarrassment. While an exile at Hamburg, and practically ruined, he wrote a pathetic letter to our Congress, which I want to read to you, because it gives an idea of his style, as well as points the pathos of this story:

"Americans, I served you with untiring zeal! I have thus far received no return for this but vexations and disappointment, and I die your creditor. On leaving this world, I have to ask you to give what you owe me to my daughter as a dowry. When I am gone, she will, perhaps, have nothing, on account of other wrongs against which I can no longer contend. Through your delay in discharging my claims Providence may have intended to provide her with a resource against other destitutions. Adopt her after my death as a worthy child of the country! Her mother and my widow, equally unfortunate, will conduct her to you. Regard her as the daughter of a citizen. * * * Americans, * * * be charitable to your friend, to one whose accumulated services have been recompensed in no other way! **Date obolum Belesario.**"

He died without the slightest recognition of his claim.

In 1778, after Louis XVI had given his assurance that the million of June 10, 1776, the receipt for which I read to you, had not been given by the king to Beaumarchais, which was a diplomatic falsehood, the American Congress persisted in thinking that it was a gift. In 1794, when there came a lull in the political storm, Congress instructed our minister in Paris to request information as to when the missing million had been given to our country, credit for which the French government had claimed. The French foreign minister then advised our representative that the million in question had been given on June 10, 1776, to Beaumarchais. This naturally confirmed the suspicion of Congress that Beaumarchais was attempting to defraud this country. Congress claimed that this million was given to Beaumarchais for our benefit, and therefore deducted it from the balance of his account of 3,600,000 livres.

You would have thought that our country, having had such signal benefits from this man, who, mark you, had hazarded every one of the forty ships he employed, and had run the gauntlet of the guns of the English navy, would have paid it without "looking a gift horse in the mouth;" but instead Congress refused either to adjust the question of the lost million or to pay him the remainder of his claim. Taking the disputed item as a pretext, it refused to make any adjustment. In 1785, it did instruct our consul general in Paris, Mr. Barclay, to make another examination of the account against which Beaumarchais for nearly a year protested, and as a result of such examination, while the claim was somewhat reduced by our consular representative, it still left, independent of the missing million, a large balance in Baumarchais' favor.

Although he was then in sore need of the money, Congress turned a deaf ear to all his entreaties. In 1787 he addressed the following letter to the President of Congress:

"What do you suppose is the general opinion here of the vicious circle in which you have involved me? We will not reimburse M. de Beaumarchais until his accounts are adjusted by us, and we will not adjust his accounts, so as not to pay them! With a nation that has become a powerful sovereign, gratitude may be a simple virtue unworthy of its policy; but no government can be relieved from doing justice and of discharging its debts. I venture to hope, sir, that, impressed by the importance of this matter and the soundness of my reasoning, you will oblige me with an official reply, stating what decision the honorable Congress will come to, either to promptly adjust my accounts and settle them, like any equitable sovereign, or submit the points in dispute to arbiters in Europe with regard to insurance and commissions, as M. Barclay had the honor of proposing to you in 1785, or, finally, to let me know without further shift that American sovereigns, unmindful of past services, deny me justice. I shall then adopt such measures as seem best for my despised interests and my wounded honor, without lacking in the profound respect with which I am,

sir, the very humble servant of the general Congress and yourself, Monsieur le President.

"CARON DE BEAUMARCHAIS."

In this letter, which I have only quoted in part, he agreed to submit the disputed question to any arbitrator with the single exception of his inveterate enemy, Arthur Lee, and our Congress actually had the indecency in reply to appoint Arthur Lee to make a further investigation. That envious, suspicious and vindictive marplot revised the figures with such obvious want of fairness that he actually brought Beaumarchais **into debt to the United States to the amount of 1,800,000 francs.**

This report was such a shocking travesty on fair play that Alexander Hamilton, then being Secretary of the Treasury, ordered another investigation, which resulted in finding that the United States did owe to Beaumarchais the sum of $2,800,000, provided that he was entitled to the lost million, and $1,800,000 if the lost million properly belonged to our government.

Still our country refused to pay, and Beaumarchais died in 1799 without having received even so much of his claim as our country did not dispute.

In 1816 in a spasm of virtue our government said, through Mr. Gallatin, to the French foreign minister, that was the most decent thing we did in the whole matter: "If you will give us your personal assurance that from your own investigation of this account that the disputed million was not given to Beaumarchais as a gift to us, and was not used by him in the purchase of military supplies, for which his estate is now charging us the United States government will make no further contest, but will accept the million as a debt, and settle the rest of the account."

Thereupon the French foreign minister replied that, while it was true that the million in question had been given to Beaumarchais, yet it was not given for arms and ammunition, but

that it was a "mystere de cabinet," and given to Beaumarchais for secret political purposes, and that, in any event, the French government was on solid ground, for which his estate was accountable to the French government.

Our government refused to accept that explanation as satisfactory, and insisted with a great deal of force in a strong diplomatic communication to Mr. Gallatin, that, as this million dollars had been paid to Beaumarchais for our use, and the French government had included it in the three millions as gifts, it must be so treated. That the bailee had a duty not only to the bailor, but to the beneficiary for whom the bailee had given the sum of money.

On the other hand, the French government said that Beaumarchais' accounts in the seven years with the French government, showed that he had received twenty-one million livres, and that thereafter there had been a cancellation of accounts between the French government and Beaumarchais, and they suggested, rather than stated, that Beaumarchais, in settling the account with the French government, had been charged with this lost million.

The dispute was not settled until Andrew Jackson—good "Old Hickory"—became president of the United States. and he cut the gordian knot in a way which almost brought on war between France and the United States. You will remember that after Napoleon became first consul and the French fleets had swept our commerce from the seas, we preferred against the French government the so-called French spoliation claims for five million dollars, or twenty-five million francs.

Andrew Jackson determined to force a settlement of these claims and instructed our minister, Mr. Livingstone, in Paris, to negotiate a treaty to that effect, and without any diplomatic delay.

Livingstone finally secured a treaty, under which it was agreed that the French would pay five million dollars for the

relief of our citizens, provided that France could deduct, for the heirs of Rochambeau and the estate of Beaumarchais, a sum, in the latter case, eight hundred thousand francs. Beaumarchais' claim was three million, eight hundred thousand francs, and as found by Alexander Hamilton it was two million eight hundred thousand francs. Assuming that he was all wrong as to "the lost million," we yet owed him one million, eight hundred thousand francs beyond dispute, and yet all that the heirs of Beaumarchais ever received under this settlement, and they did not get that until 1835, was eight hundred thousand francs, and they only received that through the settlement of the French Spoliation Claims.

The treaty was made in 1831, and the French Parliament, possibly taking a leaf from our note book, would not appropriate any money to carry out its provisions. Finally, in 1834, Andrew Jackson's patience was exhausted and wrath was great, and he sent a message to Congress in which he intimated rather brusquely that France had no intention of respecting their obligations, and he advocated a seizure of the property of French subjects in our own country, until we had received the five millions due us.

You can imagine the effect of such an undiplomatic threat upon a great and proud nation. There was an uproar in France. The French government handed our minister his passports, recalled their own ambassador, demanded an apology, and served notice upon Andrew Jackson that, unless our country apologized for his offensive language, they would neither pay the Spoliation Claims or resume friendly intercourse with us. Andrew Jackson was not the man to apologize on demand. Like Falstaff, he would never give reasons "on compulsion." Thereupon, the French government, which was very much in earnest, determined to send a fleet to our harbors to make a hostile demonstration, and "Old Hickory" in turn asked Congress to appropriate money for the national defense. In the meantime our dismissed minister was hurrying back to Washington, and Jackson had sent word to him that as soon as he arrived to come at once to the White House. It is highly

amusing, and I hope that no one of French descent will object to my telling the story. As soon as Livingstone reached Washington, he was put in a carriage and hurried to the White House, and there was Jackson with his cabinet, most of whom thought he had gone too far, waiting for Livingstone's report. Livingstone's story was to the effect that France was very much in earnest and would make war unless our government apologized. Jackson replied: "That's like them French; they never pay unless they have to."

Let it be gratefully remembered that it was then England that stepped in and tendered her good offices to both France and the United States, and as a result Jackson disclaimed an intentional affront, the French government withdrew its demand for an apology, and the French Parliament promptly passed the appropriation to pay the French Spoliation Claims. France in turn paid to the daughter, as the sole heir of Beaumarchais, the paltry sum of 800,000 francs in settlement of this ancient claim.

I need not remind this audience, composed in part of New Orleans lawyers, that it was only about ten years ago that Congress, having received in 1835 the five millions from France for our citizens, appropriated two million dollars to pay the first French Spoliation Claims. I was talking to a Philadelphian some time ago, who said he had been taught from childhood that he would be a millionaire when these claims were paid, and several years ago his lawyers wrote him they were about to make a distribution, and he hurried to the lawyer's offices, and his share was eighteen dollars!

Ladies and gentlemen, that is the story of the Lost Million. I hope I have proved to this Honorable Court a just claim for judgment on behalf of my client.

When you attend the French Opera, and hear Rossini's florid music of the Barbier de Seville, or Mozart's far nobler music of the Marriage of Figaro, think of the man who wrote

so pathetically to our country in his dying hours, "Give an obolus to Belisarius."

Let us hope that the time will come when our country will not only honor DeKalb, Lafayette, Rochambeau and Steuben and Pulaski, but will also honor that great foreign minister of France, who, next to Franklin and Washington, did more for our independence than any human being, the Comte de Vergennes; that we gratefully remember Louis XVI, who, in helping our cause out of his own private purse, lost both crown and head, and last, but not least, that we will also gratefully remember that Figaro in life — Pierre Augustin Caron de Beaumarchais.

ADDRESS

Of Hon. Frederick N. Judson of St. Louis Before the Bar Associations of Louisiana and Mississippi at Gulfport, Miss., on Friday, May 1, 1914.

The Independence of the Judiciary Under Modern Conditions.

This assemblage of the bar of two sovereign States is to me one of profound interest, and I deem myself especially honored in being invited as a guest on such an occasion. The peculiar significance is in the fact that, the law of your two States represents the two great sources of the law of the modern world. In the one State, you have the common law, which you have inherited from our English ancestry, broadening slowly down through the centuries from precedent to precedent. In the other State, we have the civil law derived from the ancient Roman jurists and modernized through the Code Napoleon. These two systems of law are, or soon will be, the only systems of jurisprudence administered by mankind.

Each of these systems of law, however, must be administered by judges, and the independence of the judiciary is as important under the one system as the other. We recognize as a truism that all judges must be impartial, and to insure impartiality the independence of the judges is essential. This underlies any conception of the judicial office, whatever the system of law administered. I therefore ask your consideration of this fundamental principle of the independence of the judiciary, as it is affected by modern conditions in this country.

The modern idea of the independence of the judiciary is associated in the minds of all lawyers with what is known as the principle of the separation of the fundamental powers of government. This may be said to be comparatively a modern conception, for, though said to have been recognized by Aristotle, it was first formulated in a comparatively mod-

ern times by Montesquieu in France in his Spirit of the Laws published in 1748.

The judicial office in ancient and mediaeval history shows little or no trace of any recognition of this principle of a judgeship distinct from other powers of government. In ancient societies the king was at once a military leader, a priest and judge. Such were the Homeric chieftains. Such were the military chieftains of the Hebrews; and such were the principes of the ancient Germans as described by Tacitus. In Rome the praetor was a political rather than a distinctly judicial officer. In England, the king was the original source of justice which was administered with the assistance of his council, or curia, and from this curia was developed in the course of time, not only the English Parliament, with its two Houses of Lords and Commons, but also the courts which have come down to our time.

Modern historic investigation has shown that in mediaeval England legislation in its proper sense, even after the recognition of the two separate houses of Parliament was all but unknown, and the Parliament was not improperly termed the High Court of Parliament, showing the fusion of the legislative and judicial functions. The king was the fountain of justice and the Parliament was his advisor in the administration of justice. Thus the bills of attainder which are expressly prohibited by our modern constitutions were illustrative of the fusion of the powers of government.

The principle of the separation of the powers of government when declared by Montesquieu made a profound and lasting impression upon thinking men. It was made at a most opportune time in the history of the world, for the American and French revolutions, which were destined in the generations immediately succeeding to make profound and lasting changes in the governmental organizations of both continents, may be said to have been then impending.

No opinion had more weight with the founders of our

government than this declaration of Montesquieu that the legislative, the executive, and the judicial are distinct powers of government and that their separation is essential to sound government. Although the Constitution of the United States does not contain a distinct declaration of this maxim, it does recognize the fact of the separation of the powers in the distinct statement of these legislative, executive, and judicial powers. Time would not permit a detailed history of the construction of these governmental principles, in the Federal government and in the States of the Union. It has been judicially settled that the principle of the separation of powers does not mean that the three powers can be kept wholly and entirely distinct, but the true meaning is that the whole power of one of these departments should not be exercised by the same hand which possesses the whole power of either of the other departments. The principle of the separation of powers is political rather than judicial, and it must rest for enforcement upon that public opinion which is the foundation of self-government. It is often difficult to point out the precise boundary separating legislative from judicial duty, and still more difficult to discriminate sometimes between what is properly legislative and what is properly executive.

Thus, while the Supreme Court of the United States has in the strongest terms affirmed that the separation of powers is one of the chief merits of our system of constitutional law, it has declined uniformly to make this a ground of annulment of State statutes. It is also clearly established that the State's determination of what modification is required in this fundamental principle of the separation of the governmental powers is not reviewable under the Constitution of the United States by the Federal courts. The distinction between political and judicial power has been illustrated in the holding that the question of which of two contending governments is the lawful government of the State, is for the legislative and not for the judicial power of the State to determine.

This principle of the separation of powers has been directly involved in the imposition upon the judiciary of ad-

ministrative duties, such as the making of apportionments of territory for election purposes and in making appointments for what are considered non-political offices, such as boards of tax review and the like. Sometimes these duties have been declined by the courts, but in many cases they have been accepted and performed. This practice, however, does not indicate a want of confidence in the judiciary, nor does it spring from a disposition to impair their independence, but, on the contrary, it denotes a distinct confidence in the fairness of the judges and a disposition to make use of their presumed impartiality in performing a non-partisan service. The tendency, however, is to be deprecated as imposing an unfair burden on the judiciary, and one inconsistent with the independence of the judicial office, which can only be effectively secured by their separation from all but judicial duties.

This principle of the separation of the powers of government has been very differently construed in England and on the continent of Europe, from what it has been in the United States. In England. the sovereignty of the British Parliament became thoroughly established after the Revolution of 1688, and this sovereignty is the historic growth of the legislative body in a country, having what Mr. Bryce terms a "flexible" constitution, that is, no written constitution. The term "constitutional law" which is so familiar in this country is in the English courts unknown in the sense in which we use the term.

On the other hand, on the continent of Europe, though there are fixed, that is, written constitutions, the power of the judiciary to declare acts of the legislature void on the ground of violation of the written constitutions is as a rule unknown and this is because the judicial power has not been developed historically as it has in the United States.

The United States is therefore unique in that it is a federal power with fixed written constitutions in the federal government and in the States, and the judiciary, therefore, has the power universally recognized in the State and Fed-

eral government of declaring acts of the Legislature void when in conflict with the Constitution, whether State or Federal.

Mr. Bryce, in his American Commonwealth, tells the story of an Englishman who had heard that the supreme Federal court was created to protect the Constitution and had authority to annul all laws, who read up and down the Federal Constitution in looking for the provisions he had been told to admire. Mr. Bryce adds that it is no wonder he did not find what he was looking for as there was not a word in the Constitution on the subject. He might have added, however, that while there is no express power in the United States Constitution on the subject, there are clauses in the Constitution which seem clearly to point to and imply the existence of such a power, and seem to have been inserted for the purpose of directing the scope and manner of its exercise. Thus, in Section 2 of Article III declaring the supreme law of the land, and the third clause in Article VI.

Time will not permit me to discuss the historic development of the power of the judiciary in this country to pass upon the validity of the legislative acts under the Constitution. The government of the United States was not only novel in havin ga written Constitution, but was also novel in the governments of the modern world, in that it was a complex federal state, including the distinct paramount authority and sovereignty of the federal government with the sovereignty in the several States of the Federation.

Some eminent jurists, notably Justice Gibson of Pennsylvania, have held that it is essential to a federal system that there must be some authority to guard against legislation inconsistent with the Federal Constitution, and that this was the only proper basis of the judicial power over legislation. Since our Constitution was adopted in 1789, federal states in other parts of the world have been founded with constitutions more or less modeled after that of the United States. Thus the Swiss federation was founded in 1848 and its con-

stitution amended in 1874. The constitution of Canada was established by the British North American Act of 1867. The constitution of the North German Federation of 1866 was enlarged into that of the German Empire in 1871, and still later the federal principle has been extended to Australia and South Africa. A large part of the world is now organized into federal governments. All of these have encountered the necessity of providing some authority for determining the relations of the constituent parts of such countries of the federal government.

In Canada the Dominion government is empowered to disallow provincial acts as illegal or unconstitutional, and the Judicial Committee of the Privy Council in London in the determination of appeals from colonial courts inevitably becomes the interpreter of the constitution. Thus in the pending Home Rule bill it is provided that the supremacy of the English Parliament shall be secured through the powers of the Judicial Committee of the Privy Council. the modern survivor of the ancient curia, wherefrom the houses of Parliament and the courts of law are both descendant. The powers of this Judicial Committee of the Privy Council are becoming the same as those exercised by the Supreme Court of the United States, in determining whether acts of the States are valid under the Constitution of the United States.

We should not overlook the fact that the arguments of the founders of our government as shown in the Federalist and in the opinion of Marshall in Marbury vs. Madison, are not based upon any considerations relating to the matters of a federal government. They rest upon the broad principle that a written constitution was necessarily supreme, and the judiciary were bound not to enforce a law in conflict with the Constitution. This was a view adopted in all the States which without exception have declared this fundamental principle in the constitutional law of this country.

The American doctrine as to the judicial power and its relation to the legislative as well as the executive power was

a necessary outgrowth of the historic antecedents of the American people. They were familiar with the application of the same principle in the judgments of the Privy Council in determining the validity of their colonial legislation. The doctrine of legislative sovereignty thereafter developed in English history was then comparatively modern, and our American colonies had a profound and deep-seated conviction, intensified by an incident of their colonial government, that all the powers of government should be distinctly restrained and held in check in order that individual liberty might be protected. Thus under the circumstances of the American colonies with the inheritance of the struggle of their ancestors for freedom in England, the doctrine of the separation of the powers of government and the independence of the judiciary led directly to the conviction that written constitutions interpreted and enforced by an independent judiciary were essential to government of the people.

The necessities of modern government have compelled the exercise of administrative powers by boards and commissions to which have been delegated, as in the case of the Interstate Commerce Commission, what are essentially legislative and executive and even judicial powers, and the constitutionality of these delegations has been uniformly sustained in the courts of the State and of the United States. The creation of these modern departments of administration has been commented on by some jurists as indicating that the classification of Montesquieu was lacking in both scientific and practical foundation. The classification has been criticised as inconsistent with the modern view of business efficiency which calls for a concentration and not the division of responsibility. This criticism, however, has not been directed against the independence of the judicial power, but deals solely with the legislative and executive departments of the government. It is well recognized that the separation of the powers of government as formulated by Montesquieu has been of vast importance in emphasizing the independence of our judiciary, and to this extent it has been firmly established in the con-

stitutional system of the country as a great fundamental principle of free government.

The power of the judiciary to declare void legislative acts which has thus been developed historically in the United States has a very important limitation, in that this power must be exercised judicially; that is, only when a case between litigants is brought before the courts. They cannot consider the wisdom or policy of legislation. They therefore can only consider the validity of a legislative act when litigation may bring the question before the court. Sir Henry Maine says that this largely accounts for the success of the Supreme Court of the United States in the determination of constitutional questions. Such questions may be the subject of political controversy for years, before they are adjudicated in the courts. This was the case of the constitutionality of the United States Bank, and also as to the power of Congress in legislating concerning slavery in the territories of the United States, first decided in the Dred Scott case after many years of discussion in Congress and before the people. The Missouri Compromise Act of 1820 was not declared unconstitutional until thirty-seven years after its enactment.

Although the judiciary in the United States has the power of determining not only questions of private rights, but also of governmental power, it was well said by Mr. Hamilton that the judiciary is essentially the weakest of the powers of government. It is a mistake to suppose that the independence of the judiciary over the legislative powers means the superiority of the judicial over the legislative power. It only means that the power of the people is superior to both, as where the will of the Legislature as declared in its statutes stands in opposition to that of the people declared in their Constitution, the judges shall be governed by the latter rather than the former. The power which controls the public purse is the greatest of the powers of government. The essential weakness of the judiciary was shown in the reconstruction period, when the Supreme Court of the United States was prevented by an act of Congress from passing

on the validity of the reconstruction acts in the case of a Mississippi editor then actually impending. It was understood at the time that Congress, fearing that the Supreme Court would decide that the reconstruction acts were unconstitutional, passed an act repealing the right of appeal in such cases. This weakness of the judiciary, even in the most powerful court of the country, was further illustrated during the administration of President Andrew Johnson, when Congress was at war with the President, and did not wish him to make any appointments to the court. It reduced the number of members from nine to seven, as vacancies occurred, and did not increase the number again to nine, until he had retired from the presidency. In the States however, as a rule, the number of judges is fixed by the State Constitution.

The position of the judiciary has also been profoundly affected by the modern popular desire to restrain and limit the legislative powers. The Constitution of the United States declares only the broad outlines of legislative power without attempting to enumerate in detail, or to specify each and every one. Very different has been the constitution-making, particularly during the last fifty years, in the several States, as they are filled with detailed restrictions upon the law-making power. Some of the most recent State constitutions have become veritable codes of laws. Some of these constitutional restraints are occasioned by the growth of special interests with the increasing population and wealth. But it is none the less true that this excessive restraint upon the legislative power and the effacing of the line of distinction between the permanent law of the constitution and the enactment of legislation, is to be deplored, not only because it multiplies constitutional questions in litigation, but it also makes the operation of public opinion slower, and tends to intensify the professional conservatism of our lawyers and makes them, as well as our judges, strict constructionists. This intensifies what has been termed the contentious spirit of our litigation and obscures the administration of justice. This directly impairs the position and independence of our judiciary.

There is a growing disposition to a lack of caution in legislation on the theory that any doubtful matters can be straightened out by the courts. This imposes an undue burden upon the courts and exposes our judiciary to criticism for the exercise of the jurisdiction, which is thus forced upon them. This is specially obvious in the modern impatience of constitutional restrictions, in the demand for so-called social betterment by legislation. We are told that the progress of the law is not commensurate with the wants of modern society; that judges are controlled by precedents of past ages, and our laws are construed without regard to modern conditions. There is an impatience manifested over the restraints imposed by our constitutional system, which was carefully devised to insure the sober second thought of the people and to restrain impulsive and inconsiderate action of any kind. Our judges therefore are sometimes charged with a failure to perform their duty to their fellow men and with a disregard of social and industrial demands when they decide cases involving the constitutionality of so-called social legislation. Radical remedies are therefore suggested, such as the recall of judicial decisions and the recall of judges.

Before considering these remedies in detail, it should be suggested that the true remedy is in relieving our judges of the burden of such litigation by omitting such detail legislation from our constitutions, leaving in them only the provisions which are proper in the organic law, and at the same time making them readily amendable, when the public needs such amendments upon due and proper consideration. Another remedy lies in improving the legislative product by the employment of official draftsmen, as in the English Parliament, or in Bureaus of Legislative Research, such as have been adopted in Wisconsin and other States.

The independence of the judiciary in the United States has been profoundly affected by what may be termed the progressive democratization of the courts, that is, of the State courts. When the Federal Constitution was adopted in 1789, none of the States chose their judges by popular election and

in most of them the tenure was for life or good behavior. During the Jacksonian era in the last century between 1830 and 1840, a movement spread over the United States to substitute popular election of judges for appointment, until now, outside of the six New England States, there are but five States in the Union in which the Judges in the Supreme Court are selected otherwise than by popular election. I understand that Mississippi was one of the first States to adopt the elective system, which it subsequently abandoned, and that it is since returning to the elective system. The terms of office vary from a life tenure in three States, twenty-one years in Pennsylvania, to what is said to be the usual number, six years, for judges of the Supreme Court and for judges of the trial courts even less.

It is not my purpose to discuss the merits or demerits of the elective and appointive systems, as this movement extended far beyond the substitution of an elected for an appointed judiciary. It is true that the judges selected by popular vote for the high and other State courts in the States of the Union have often ranked high in ability and character and in many cases compare well with those selected by the appointive system in the Federal courts. These facts bear eloquent testimony to the higher and discriminating intelligence of the American people in the performance of the supreme duty of citizenship in the selection of their judiciary, and it is clear that the selection of judges in a country of written constitutions where the courage and independence of the judiciary are essential for public security, require a supreme exercise of intelligence and self-restraint on the part of the people. At the same time we cannot shut our eyes to the fact that, excepting in these States of the United States which have thus substituted an elective for an appointive judiciary, there is no other part of the civilized world except the cantons of Switzerland, which selects its judges by popular election. It is also true that, under our system of party government the forcing of judges to seek political nominations is itself a danger threatening the independence of the judiciary, which requires the development of a watchful pub-

lic opinion and the earnest efforts of the bar. The substitution in many of our States of primary elections in place of conventions has often the effect of seriously increasing those dangers incident to an elective judiciary through political nominations. Thus in States where the vote is evenly divided between the political parties, the candidate is subject to the annoyance and expense of two campaigns, first for the nomination and then for the election. These deplorable conditions, it is gratifying to know, are arousing public attention and public opinion is becoming more and more favorable to taking judicial elections out of partisan elections and out of the control of politicians.

But the movement of legislation to which I have referred extended far beyond this substitution of an elective for an appointive judiciary. It was distinctly based upon a distrust of the judicial power. Although the ancient forms of pleading have been abolished in nearly all the States, the legislation of the States undertakes to provide the details of judicial procedure, and in many the trial judges are compelled to give their instructions to the jury in writing, and are forbidden to comment upon the testimony. In some States, as in my own, appellate judges are forbidden even in the State constitutions to exercise any discretion as to what opinions should be given in writing, and therefore must give them all in writing whether important or unimportant, whether valuable as precedents or not, and are compelled to set out in their opinions a full statement of the facts and the reasons for their conclusions.

The short judicial term, irrespective of the question of election or appointment, is itself an evil and necessarily impairs the independence of the judiciary. The attempted regulation by legislation of the details of judicial procedure has very seriously impaired the common law independence of the judges. Mr. Bryce, in the recent revision of his Commentaries upon our institutions, says that the American bench has suffered from such legislation. It has been a potent cause for the congestion in our courts which has caused delay and even

a denial of justice. The attention of the bar and public has been called to the startling contrast between the prompt and speedy administration of justice in England and in Canada, where reform in judicial procedure has been effectively established, while this reform is so laggard in this country, though both countries have inherited the same system of substantive law. We are just beginning to recognize that any statutory code of procedure which undertakes to regulate all the details of practice is liable itself to become the subject of technical construction and lead to the miscarriage of justice. The only effective remedy for this deplorable situation is to vest a larger discretion in the judges, so that they may have the power and independence to disregard the technicalities, to regulate the rules of procedure and inaugurate a reform of the anomalous and archaic rules of evidence. If we wish reform in judicial procedure, we must therefore retrace our steps and vest, not less, but more independence in our judges. Thus to seek to impair still further this independence by holding before our judges the threat of summary dismissal by public petition, or by reviewing their opinions at the hustings, will only aggravate our existing defects in the administration of justice. It is true that we cannot in this country give our judges the deference and prestige which in England are due to inherited social conditions; but we can secure a judicial independence, even in an elective judiciary, which will rest upon a more enduring basis than that of England, upon the conviction of an enlightened self-governing people that the proper administration of justice can not be secured except through the wide judicial discretion of an independent judiciary. We can not in this country secure judicial reforms through the enactment of a sovereign Parliament, applicable throughout the country, but the complex machinery of our government delays only the whim and not the will of the people. The true philosophy of our governmental system is that it only secures that sober second thought of all the people, which is essential to all enduring reform in human progress.

The proposed recall of judicial decisions is in principle more objectionable than the recall of judges, as in the latter

case the people would only vote upon the fitness of the individual judge, while in the recall of decisions the exercise by the people of the essentially judicial function is invoked. The suggested recall of decisions would destroy all consistency in constitutional interpretation and would be a return to judicial determination by popular assembly familiar in classic history. It would substitute the vote of the populace for the determination and judgment of the courts, and would be in effect destructive of judicial power. It is true the people make the constitution, and have the power to amend it, but this does not mean that they should have the power to disregard its application, and that we should substitute the popular judgment upon specific acts of legislation, in place of relying upon the general guaranties of private right in the constitution. It is obvious that such a recall of the constitution itself in a State could have no effect upon the judgment that the act was violative of the Federal Constitution, and therefore some of the advocates of recall of decisions have proposed an amendment to the Federal Constitution, whereunder the decisions of the Supreme Court of the United States are to be subject to a national recall. Such a remedy misconceives the fundamental theory of our political system, with its distribution of the powers of government, and would effectually preclude the realization of the advantages of such distribution.

A more serious attack upon the courts is that of the recall of judges, which has been adopted in the constitutions of several of the States. This does not seem to aim in the first instance at the judges, but it has been adopted as a panacea applicable to all officials. The American Bar Association has firmly condemned this scheme of the recall of judges, and there can be no doubt that the existence of such a remedy, whether exercised by the people wisely or not, would be fatal to the independence of the judges.

We should not overlook the fact, however, in considering this question of recall that with our short judicial terms and political nominations, we have another form of recall which is almost as effective in destroying the independence and efficiency of our judiciary. In such cases it is a matter

of common observation that judges are recalled by the expiration of their terms at the very height of their usefulness, and the election turns in nearly all cases, not upon the record or capacity of the judge, but upon the political conditions at the time of the election. It has therefore been said, and well said, that if judges were elected for life and secured against this form of recall, then there might be a recall with proper limitations on the question of the continuous fitness of the judge for office. So clearly is this condition realized, that bills have been introduced in the Legislatures of several States providing for such judicial recall; that is, for electing judges at special judicial elections on non-partisan ballots to hold office for life, unless removed at elections held at stated intervals. This form of recall is certainly far preferable to our present system of electing judges for short terms. But even as thus qualified, it is subject to the very grave objection that the independence of the judges is impaired by compelling them to submit, even at stated intervals, to the popular judgment upon their judicial record or fitness at the polls.

It must be borne in mind, in considering this question of the judicial terms, that as human justice is necessarily administered by mortal men, it has been found in all ages, that our judges are subject like other men to the imperfections of our common humanity. Judges who are physically strong when elected may be prostrated by disease, and in the course of time all judges are subject as other men to the limitations of human activity, which exists now as in the time of the Psalmist. In some of the States there is a retiring age, usually of seventy years, but in the States there is no system of pension for those who are compelled to retire on account of the age limit or on account of physical infirmities. The laws of the United States, however, have a laudable provision whereunder judges who have served for ten years and have reached the retiring age may resign and receive their salary for life. In England, after fifteen years of service, or on being disabled by permanent infirmity, judges may retire on a pension.

In all ages it has been recognized that maturity of judgment and large human experience as well as intellect and

learning are desirable and indeed essential qualifications for the performance of judicial duty, and as a rule, barring exceptional cases, conspicuous fitness for the bench is not recognized or attained until after many years' service at the bar. Mature men and even elderly men rather than young men have therefore been selected as judges both in ancient and modern times. It is therefore necessary under these essential limitations of human life and experience that provision should be made for these inevitable limits of human activity by the pensioning of retiring of disabled judges. In recent times the pensioning system has been adopted for the teachers in our great educational foundations and also for employees in business enterprises, and as already shown, this system has been adopted for judges in the English and Federal courts. There is the more need for this provision for age and disability in the case of judges as they are not as free as other men in making provision for themselves. Thus judges are often embarrassed in making investments, if they are fortunate in having funds to invest, through the necessity of avoiding even the appearance of an impairment of their judicial independence.

Judges are also subject to the imperfections of common humanity in other than physical relations. We have heard frequent complaints that judges carry into the judicial office, whether elected or appointed, a tendency to prejudge questions growing out of their educational environment and social and business dependencies. Thus in 1877, in a grave national emergency for which the Constitution had made no express provision, it was found that the judges of the Supreme Court aligned themselves on the side of their respective partisan relations in the same manner as did the members of Congress who were associated with them. It has been frequently charged that certain private interests have been exceptionally active in the selection of candidates for the elective bench and even in securing the ear of the appointive power where judges are selected by appointment. Such cases, however, it is believed, are exceptional, and due to the unavoidable limitations of all human government, which can only be rem-

edied by the discriminating action of the electorate or the appointing power in the selection of judges.

The judicial independence, therefore, does not mean that a remedy should not be provided for misconduct or proven incapacity. The ancient common law method of impeachment which has become almost obsolete in England is preserved in full force and vigor in the Constitution of the United States and in the constitutions of many of the States. We have had some impressive examples of the efficiency of this remedy, even as to members of the judiciary.

This remedy of impeachment does not reach many cases of unfitness for the performance of the duty of the office which involve no dereliction of duty, such as the physical or mental disability, incapacitating a judge from performing the duties of the office. We certainly ought to have a prompt and efficient remedy for any incapacity or inability to perform judicial duty, commensurate with the dignity and responsibility of the judicial office.

In England in the Act of Settlement of 1701, wherein the judges were first made independent of the royal power, in that they were given a tenure of good behavior instead of being removable at the pleasure of the king, it was provided that the judges should be removed by the king upon an address made by both houses of Parliament, and this principle is incorporated in the Judicature Act of 1875. In the Federal Constitution the tenure of good behavior was adopted, but the provision for removal other than by impeachment for dereliction of duty was not adopted. Mr. Hamilton said in the Federalist that removal by address was a provision which was inconsistent with the necessary independence of the judicial office.*

A different view, however, has been taken in many of the States, and the example of England in providing for the removal of judges by address whenever a judge is unable to discharge his duties has been followed. Thus in the State

*—See 79 Federalist, 24.

of Missouri the Constitution provides for the removal of judges by address whenever the judge is unable to discharge the duties of his office efficiently by reason of continued sickness or physical and mental infirmity. Hearing, however, is provided for, and the arbitrary or oppressive exercise of the power is sought to be prevented. In England it has not been found necessary to exercise this power of removal by address, for the reason that the judges who are disabled by reason of infirmity may retire on a pension. In this country the remedy has apparently fallen into disuse, probably through the fact that short judicial terms made it unnecessary, as judges thus disabled can be retired at the next election. This remedy of short terms, however, is obviously inadequate and inconsistent with any proper conception of the judicial character.

The public interest demanding a prompt administration of justice requires that there should be an effective remedy, not only against dereliction of duty on the part of the judges, but against unfitness for office of any kind, even physical infirmity, and the protection of the public against any oppression and delay in the administration of justice is not inconsistent with judicial independence, but is demanded by the vast importance and responsibility of the judicial office.

The true remedy is to abandon our system of short terms in the State courts and to provide for the appointment or election of judges, as under the English system, during good behavior. We should revive the ancient remedy of removing judges by address after due hearing, and public opinion and the bar should enforce the use of this remedy whenever there is any unfitness, either physical or mental, for the due performance of the grave duties of the judicial office. With this, however, should be provided a suitable pension when a judge is removed from office in any case not involving moral dereliction. We should thus develop a power of public opinion which would no doubt in time have the effect in this country which it has had in England of obviating the necessity of calling the power into exercise. This public necessity was

recently illustrated in an act of Congress authorizing the retirement of a judge of the Supreme Court who had served but a short time and was not qualified to retire under the statute, but who was permanently physically disabled for the performance of his judicial duty. In England such a judge could be retired on a pension without the necessity of legislation. In the States, a judge thus afflicted has no such recourse and there is no remedy for the public until the next election, unless the judge can afford to resign without a pension.

We have evidences on every hand of the distrust among our people of our judicial system. This distrust has been proclaimed in the popular press and even in the political platform of one of our great national parties, and has been voiced by the only living ex-Presidents of the Republic, though on different grounds and from radically different points of view. It is no exaggeration to say that the judicial procedure of the United States is now under indictment, if not on trial before the bar of the public opinion of the country, and even of the civilized world. We are now beginning to recognize that the demand for simplicity in procedure does not spring from ignorant reformers and radical iconoclasts but is a progressive step of rational advance in a progressive jurisprudence. Forms were regarded with superstitious reverence in the early stages of society, but we now recognize that the simpler the procedure the better it serves the purpose. It doesn't mean that accuracy or precision of statement of judicial procedure shall be any less important than they are now, or that a clear and concise statement of the facts in issue will not always be effective. Substance and not form must be of the first importance. It does not mean that we should substitute haste and want of consideration for deliberation and judgment. But it does mean that our judicial machinery must be so modeled that justice will be literally brought home to the people and that busy men can afford to litigate questions arising in our complex industrial life.

This reform, however, is dependent at every stage upon a

wide discretion of an enlightened and independent judiciary. Whether we substitute elastic court rules for the rigid statutory procedure, or appeal to the courts to apply their judicial discretion in minimizing the archaic rules of evidence which now obscure the ascertainment of the facts in issue, or if we make the trial judge more than a mere umpire in the game of litigation, or if we seek to reduce the overwhelming mass of printed reports that are only useful as precedents, or even if we seek to reduce the interminable volume of judicial opinions, and if more than all we seek to remove the ancient presumption of prejudice from error, and to make our appellate hearings more than mere quests for error—in each and every one of these methods of reform, we find as an indispensible factor the enlarged discretion of an independent judiciary. Our past failure, or rather our halting steps in seeking these reforms, are owing to the mistaken policy of distrusting and limiting the judicial power and preventing the exercise of judicial discretion.

Unless our judges are independent and protected against popular clamor and the demand of political changes, they cannot perform their duty to the people in the administration of justice for the people. This independence of the judiciary cannot be secured without a supporting public opinion, and this cannot be insured without the co-operation of an intelligent and conscientious bar. This means that we must control our contentious spirit in the trial of causes and make the quest for error subordinate to the demands for justice. Lawyers have in the past been the leaders in the movement for popular and judicial reforms. May we also be leaders in guiding and directing public opinion so that the administration of justice may be adequate for modern wants and the integrity of our constitutional system be preserved for the generations to come.